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SPEED

PUBLIC ADMINISTRATION AND POLICY

An Asia-Pacific Journal

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PUBLIC ADMINISTRATION AND POLICY

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Challenges faced by the Hong Kong SAR Government

Carrie Lam

Chief Secretary for Administration, The Hong Kong SAR Government

(Following is the speech by the Chief Secretary for Administration, Mrs Carrie Lam, delivered at the re-launch ceremony of the Hong Kong Public Administration Association's academic journal, held in the Police Officers' Club on September 27, 2012.)

Thank you very much, Peter (Professor Peter Fong). Just a bit of correction: I have been in the Government for 32 years. I don't want to understate my age. Of course, for the first 27 years I worked as a civil servant. And then I resigned from the civil service to join the political team in 2007, serving as the Secretary for Development for five years, and now continuing my service for the public as the Chief Secretary for Administration.

Now, of course, I often attend occasions. As long as there is a single non-Chinese-speaking guest, it is out of sheer courtesy that I should speak in English, but on this particular occasion there is another reason to speak in English. I hope you will forgive me: it's because I have not prepared any speech. So I came here and noticed there is this journal, and flipping through the pages I noticed that the Chief Executive, Mr Leung Chun-ying, has an article. Or perhaps it's not an article - I was told it was a speech delivered by C Y last July, so it was quite before he started his campaign for the position of the Chief Executive, and of course now being the Chief Executive of the Hong Kong SAR. So I thought I might as well do a response, or a critique, of what he has said last July, and that's why I need to do it in English, because the whole article was written in English.

I must say that when I first read this title, I was not very comfortable, because the title of the speech delivered by C Y was this: "How to Restore the Pride and Effectiveness of the Hong Kong SAR Government" on an occasion of the Hong Kong Public Administration Association (Hong Kong PAA) last July. So what made me a bit uncomfortable was this title, apparently suggesting that the Hong Kong SAR Government has lost some of its pride and effectiveness, and that's why it has to be restored. Fortunately, he started off in his speech, which was now recapped in this written piece, edited by Sonny (Professor Sonny Lo), I suppose, that he did not choose the title of the speech. The title was given to him by Peter. So it is for Peter to explain to us why he felt that the Hong Kong SAR Government has lost some of its pride and effectiveness that has to be restored. But I'm glad, actually, that before he contested for the position and assumed the position of the Chief Executive, C Y said that he too felt that this was not a very appropriate title because he rated the Hong Kong civil service

very, very high - it's very dedicated, very diligent, very hardworking - but he still wants to share with us some of his views.

Now, I had better treatment from the Association. The Association asked me, "What do you want to talk about over lunch?" Well, in fact I made a very casual suggestion. I told the Association maybe I'd talk about the challenge faced by the Hong Kong SAR Government in this term of the Administration.

So put simply, the greatest challenge I felt was actually to translate what the Chief Executive promised in his election manifesto into action. And some of the things that Mr Leung said last July were subsequently reflected in his manifesto, so it was still very proper for me to try to respond or comment on some of the points that he made over a year ago on the same occasion. Now, of course, we have successive Chief Executives in the last 15 years after reunification with the Mainland of China, but my personal view is that it was for the first time that we have a Chief Executive who had a very clearly laid out vision in his manifesto and, as he had emphasised time and again, that in putting together this manifesto he had done extensive consultation. I'm sure Ho Wing-him will bear that out, who has assisted him in writing parts of this manifesto as far as elderly welfare and other things are concerned. So I would really regard his manifesto as a promise to the 7 million people of Hong Kong.

So the greatest challenge of this term of Government naturally is to deliver those promises, especially when there is this Chief Executive who may want to run for a second term, especially come 2017 we have universal suffrage for the election of the Chief Executive. So the next five years will be crucial to test out whether, having promised people that there are things that he wanted to do, that he could deliver those.

And that brings me back to the purpose and the mission of the Hong Kong PAA, which is about effective governance, which is about good public administration. Because it is not enough, speaking as a public servant with over 30 years of experience, it is simply not enough for effective governance to be delivered just by vision. You need effective governance, you need good public administration in order to deliver those policy pledges for the people of Hong Kong.

Over lunch we talked about what is actually the relationship between politics and public administration. My view is the two simply cannot be separated. You cannot have effective governance just by displaying politics or political leadership. Likewise, these days, particularly in the Hong Kong situation, I'm becoming quite sceptical that you cannot just have good public administration without some political skills, political language, and all sorts of ways to really handle the political situation in Hong Kong, which is becoming more and more complicated.

So, in the last three months, the new Administration has really tried very hard to

deliver the Chief Executive's election pledges. The first thing that the team has decided is we have perhaps to deviate from the past practices, whether before the reunification or after the reunification, to follow this routine of an annual Policy Address to tell people what you want to do.

In the past, the due process is individual bureaux and departments will work out what they want to do in terms of policy initiatives, or what they call a bottom-up due process or approach, and then all these initiatives, after having secured the necessary policy support and resource allocation, will go into the annual Policy Address and the policy agenda of the Chief Executive.

But now that we have a manifesto, we have a vision of the Chief Executive, this approach is no longer adequate. To put it another way, in fact the way forward, or the direction, has been set in the manifesto document, and people are becoming more and more impatient - they don't want to wait for an annual occasion to listen to what the Chief Executive has to say and what action plans he has put in place, and what policy initiatives individual officials will roll out in the next 12 months. They look for real action - because they have already been promised something, so they look for real action. And so at the very early stage of the Administration, or really on the second day after we were sworn in, we have already decided that we need to spare no time and no efforts in translating the Chief Executive's promises into actions that we could tell the people of Hong Kong.

So in exactly half a month's time, on July 16, when the Chief Executive attended the full Legislative Council, before the Council went into prorogue in preparation for the Legislative Council elections, he already outlined five important initiatives that he will deliver. All those are taken from his manifesto; we did not dream up those initiatives through a bottom-up approach. We already had those initiatives laid down in the manifesto. The job of the Administration, Principal Officials plus senior civil servants together, is to work out the actual implementation plan for each and every of those initiatives.

Of course, in order to fulfil the pledge that we will look after livelihood issues, several of the, or in fact all of the, five measures introduced on July 16 are livelihood measures, like introducing an Old Age Living Allowance for elders in need who are aged 65 and above, this \$2,200; doubling the medical vouchers, again for elderly people, from \$500 to \$1,000; making available a 5,000 quota for those who aspire to own a flat to buy from the secondary market of HOS (Home Ownership Scheme) without land premium; creating \$500 million for promoting social enterprises and social entrepreneurship in Hong Kong; and helping the NGOs to redevelop their GIC (Government, Institution or Community) land into youth hostels, so we could also help to meet some of the housing, if not ownership but for rental, aspirations of the young people.

We thought we'd have a little bit of breathing space, having done the five, but in no time we realised that we need to continue with this pace of delivering the Chief Executive's Policy Address, particularly after those rounds of district visits. As you will remember, on July 2, many Principal Officials were sent down to districts to have district forums, and in between the district forums we also met with the people to listen to community groups' aspirations, and we actually got very useful feedback from what the people want. All these then aggregated together and suggested that we should do some more livelihood projects that would touch the hearts of the people.

So one of those that we have put together, very much by myself co-ordinating with the various departments, is this programme to install lifts throughout the territory where there are pedestrian walkways, footbridges, in order to enhance universal access for elderly people, for people with disabilities or even for young families with babies. This particular programme, which is entitled "Making it easier to get around", has proven to be very popular. It is not a big project, it's not a very sexy project, to put it that way, but it is a very encouraging move by the Administration - that to us, to this term of Government, no livelihood issue is too trivial. So we try to respond as positively as possible to the needs of the people, especially at the very local level.

In order to do that, actually we need to pull different parts of the Government together, and that's where I find my job as the Chief Secretary for Administration meaningful, purposeful and very heart-warming, because I truly believe that, as I try to dispute the title of this speech, I truly believe that the Hong Kong civil service remains very effective, a very proud organisation that wants to do good for the people. But we are facing increasing obstacles in various respects. First is, of course, these days government businesses are very complicated. Normally you cannot have one bureau or one department that is capable of handling one issue, whether it is about a lift installation programme throughout the territory or about the recent enforcement actions against these parallel traders, or even after the major typhoon Vicente, we had to clear up those plastic pellets spilled over - it is not the job of one department or one bureau. It has to be one government, it has to be different parts of the Government being pulled together in one direction, in one heart, in one mind, to serve the people of Hong Kong. And once we get there, we get things done, as you can see for yourself after the last three months.

So with that experience we went on. We went on to do some very interesting projects. One is at Tin Shui Wai. There have been so many complaints about Tin Shui Wai New Town, particularly in the northern part, which is predominated by public rental housing. People coming from grass-roots backgrounds, and many of whom are on social security, so they have very low buying power and so on. But in the same area, people complain that there is a lot of monopoly of shops and retail spaces and so on. There is insufficient diversity in the retail end for these grass-roots people to buy. So again through - cutting a long story short - by pulling the relevant departments together,

and particularly under the co-ordination of the District Officer (Yuen Long), we launched a project to create a Tin Shui Wai open-air bazaar in a very centrally located area in Tin Shui Wai North which is next to an LCSD (Leisure and Cultural Services Department) park. And it will provide around 200 stalls on very low rental, estimated to be around \$800 to \$1,000 a month, for leasing to hawkers, small businesses, individual entrepreneurs who want to provide more shopping outlets for the local people, or also maybe other outlets to sell their home-made souvenirs, art pieces and so on.

This particular project has gone a step further, to tease out what C Y said in his speech last July, that we have to perform different layers of government. We have to be more or less like the federal government type, devising our own education policies, our housing policies and also our international relationship, economy and trade, and so on. But down at the lowest level, we are also a municipal type of government. We need to look after the daily needs of people in districts, in neighbourhoods, and so on. So the Tin Shui Wai project has demonstrated to us that the CE is right in his vision that we should try to resolve district problems by district solutions, and we should seize district opportunities to create jobs for the district. And so this is a little example. I promised the Yuen Long District Council during my visit yesterday that we will, again through all these concerted efforts of the government departments, try to aim at opening this bazaar before Chinese New Year next year, so it's only four months from now. It's quite incredible in terms of efficiency.

That's why you don't need to doubt the efficiency of the Hong Kong SAR Government. It remains very efficient, as long as we get our act together, as long as there is a very clear direction, and all my colleagues, whether they are Principal Officials or civil servants, they still want to do good things for the people because that's the best reward for being a public servant. And I realise that in the audience I have my former colleagues. Ho Wing-him is here; Michael (Mr Michael Yip) is also a former colleague working in the Police. I'm sure there are others, and I can speak on behalf of them as well that the biggest reward or the biggest appeal to be in the public service is to serve the people of Hong Kong, it's to make sure that we are doing good things. We are helping to improve the livelihood of the people.

I want to stop here, and if you have questions you want to ask in whatever language, as long as I know that language, then I could give you my view. But this is not an occasion for very serious debate on very controversial issues. I long to hear from you - you are the public administration gurus and practitioners, and I look forward to reading more enlightened articles in the re-launch of this journal and hope the Hong Kong PAA will continue to play a very crucial part in the effective governance of Hong Kong.

Thank you very much.

The Dynamics of Executive-Legislative Discord in Hong Kong: Conflict, Confrontation and Adaptation

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Abstract

Executive-legislative relations in Hong Kong have been transformed from harmony during the British colonial era to a far more conflict-ridden and confrontational mode after the handover of the British territory to the People's Republic of China on July 1, 1997. The conflict-ridden relations between the executive branch of the government and the legislature have worsened since the introduction of more directly elected members to the Legislative Council. The confrontational relationships have been compounded by the mutual distrust between the government and the pan-democratic forces, and between the pro-establishment camp and the pan-democratic front. Exacerbating the political impasse is the partially reformed political system in Hong Kong, where the Executive Council is filled with pro-establishment elites without co-opting a few directly elected democrats. As a result of the politics of exclusion and the patronage nature of the political appointees system that was introduced into Hong Kong in July 2002. The media criticisms of the personal integrity and performance of a few appointees have delegitimized the Hong Kong administration under the leadership of the new Chief Executive C. Y. Leung. Without a more drastic overhaul of the Hong Kong political system, especially in the form of appointing representatives of the pan-democratic camp into the top-policy Executive Council, executive-legislative relations are bound to be conflict-ridden, confrontational and controversial, albeit the government will continue to adapt to the politicized circumstances and respond to public demands in a more pluralistic manner.

Introduction

Unlike British-style parliamentary democracies where the rotation of political party takes place and where the executive branch, especially the cabinet, has members elected by citizens (Munro 1987; De Smith and Brazier, 1994), the Hong Kong Special Administrative Region (HKSAR) is neither a parliamentary system nor an American presidential one in which the Chief Executive is elected with a powerful mandate from the ordinary citizens. Without a legislature fully direct elected by citizens, and without a

top policy-making Executive Council (ExCo) operating like the British cabinet with some members elected by the voters, the HKSAR executive-legislative relations are separated with mutual distrusts and confrontations. With a Chief Executive in the HKSAR elected by 1,200 members of an Election Committee, he does not garner the legitimacy and mandate as with the American President.

As a matter of fact, executive-legislative relations have become one of the most hotly discussed topics in Hong Kong politics in recent years, especially in view of the apparently weak political leadership of the government after the handover. In the minds of the government, an uncooperative legislature is an impediment to its effective capacity. But to most legislators, particularly to the opposition camp, the crux of the problem lies with a relatively "hostile" government which is loath to listen to, let alone respect, their views, which supposedly represent the crystallization of public opinions. The frequent scenes of the two sides blaming each other are a testimony to the disharmonized executive-legislative relations in the HKSAR.

In the Western political systems, the legislature is supposed to play the role of being a linkage between the government and citizens, a representation of constituents, a debating forum, and a legitimizing function for political institutions (Kreppel, 2008). Apparently, the Legislative Council (LegCo) of the HKSAR is operating in a way that demonstrates these four major roles; nevertheless, the executive-legislative relations in the HKSAR show serious discord, as this article will discuss. Due to the largely unelected nature of the executive branch of the government, and to mutual distrusts between the executive leaders and legislators, the LegCo of the HKSAR serves as a serious forum for political struggle and ceaseless disputes.

This article aims at examining the changing dynamics of executive-legislative relations in the HKSAR. As the LegCo of Hong Kong is still not fully directly elected, to what extent does it represent the interest of the general public? What political resources does it have in shaping government policies? This article will first trace the transformations of the LegCo — its composition, functions and powers — from the colonial era to the present. Then, it will discuss executive-legislative relations after the handover, and more attention will be focused on the period from 2005 to 2012 in order to explore the powers of LegCo vis-a-vis the government. Finally, the article will discuss the prospects of executive-legislative relations in Hong Kong. It will argue that unless the executive branch of the HKSAR government is democratized further, the tense and conflict-ridden relationships between the executive and the legislature will persist in the years to come, thus continuing to undermine the legitimacy of the HKSAR government.

Legislative Council in Hong Kong under the Colonial Rule

Under the colonial rule of the British empire, Hong Kong's political regime was

characterized as an executive-led government in which the Governor, who was appointed by the Queen, possessed tremendous power not just in running the administration but also in initiating legislation. Since LegCo's establishment in 1843 until 1985, all of its members were government appointees, including both official and non-official members. However, reforms were implemented to enhance the representativeness of the LegCo. The first major breakthrough occurred in 1976, when the Governor appointed more non-official members (22) to the LegCo than the official members (20) (also see Table 1). Peter Harris's following description succinctly captured the status of LegCo at that moment.

In Hong Kong, the Legislative Council is a 'bureaucratic' rather than a 'legislative' arm of the machinery of government. Before 1976, it had a majority of civil servants who sat as the spokesmen of their departments. After 1976, it was *just theoretically* possible for all the members who were not government officials to find an issue on which they could 'vote' against the government with a 'majority' opinion (Harris, 1988: 91; italics added).

The reasons why the LegCo at that time could "just theoretically" challenge the government were fourfold: (1) some of the members, though non-official in capacity, were still appointees of the government; (2) the members did not form a party or coalition to bargain with the government; (3) members did not actively engage in LegCo debate; and (4) the Governor was the LegCo chairman overseeing the whole LegCo business (Harris, 1988: 91-92).

Table 1: The Legislative Council's composition, 1947-1982

	Ex officio (including the President)	Nominated officials	Nominated unofficials	Total
1947	6	3	7	16
1951	6	4	8	18
1964	6	7	13	26
1966	5	8	13	26
1973	5	10	15	30
1976	5	15	22	42
1977	5	16	24	45
1980	5	18	26	49
1982	5	18	27	50

Source: N.J. Miners, *The Government and Politics of Hong Kong* (Hong Kong: Oxford University Press, 1981), p. 126.

Therefore, the truly historic turning point of LegCo formation was the introduction of elected members from functional constituencies (different occupational groups) in

1985. In Table 2, 12 out of 57 legislators were elected into the law-making chamber through occupational groups, such as the Hong Kong Bar Association and the Professional Teachers Union. Leading democratic figures entered the political arena through this channel, such as Martin Lee (legal constituency) and Szeto Wah (education constituency), who, unlike the appointed LegCo members, held more liberal values and were more critical of the government and its policies, particularly on issues like political reform. In Kathleen Cheek-Milby's words, prior to 1985, the legislature's main function was systems maintenance, and as such, what mattered was "the ability of the legislature to promote integration of the political system, mobilize support for its policies, and legitimize those who are in power" (Cheek-Milby, 1995: 175), while the two other main functions of legislature — policy-making (policy formulation, deliberation, and oversight) and representation — were not carried out to the full extent.

Table 2: The Legislative Council's Composition, 1984-1995

Years	Officials	Appointed Members	Elected by			Total
			FC	EC	GC	
1984	17	30	--	--	--	47
1985	11	22	12	12	--	57
1988	11	20	14	12	--	57
1991	4	18	21	--	18	60
1995	--	--	30	10	20	60

Note : FC=Functional constituencies. EC=Electoral College or Committee.
GC=Geographical constituencies.
Source: Lo Shiu-hing, *Governing Hong Kong: Legitimacy, Communication, and Political Decay* (New York: Nova Science Publishers, 2001), p. 166.

Since the 1990s, patron-client relationships between the government and legislature have started to change drastically. Most notably was the introduction of directly elected seats from geographical constituencies in the 1991 LegCo election. In Table 2, in 1991, 18 of the 60-member LegCo were directly elected by citizens in geographical constituencies. This election altered the political landscape of Hong Kong in the sense that, first, for the first time the elected members (both from geographical and functional constituencies) outnumbered the appointed members; and second, more democratic figures were brought into the LegCo to challenge the traditionally conservative LegCo members. Subsequent to the expansion of election was the fading of the Governor's role in the LegCo. In 1991, the Governor, though remaining as a LegCo member and the president, decided not to preside over the meeting. In 1993, the Governor ceased to be a LegCo member and the president. With the decline of executive influence and the rise of elected legislators' role in the LegCo, the functions of LegCo in policy making and representation increased while its 'decorative' dimension of supporting and legitimating the government declined (Cheek-Milby, 1995).

However, the transformation of LegCo was the most drastic in the final years of the

colonial era. The last Governor Chris Patten (1992 - 1997) further separated the executive and legislative branches by de-linking the Executive Council (ExCo) from the LegCo's composition. Previously, there was a higher degree of overlapping membership of ExCo and LegCo, when the Governor appointed respected elites to be the members of both the ExCo and LegCo. These members were expected to be the middle men, messengers, and brokers between the two branches. The second political reform undertaken by Chris Patten was the enhancement of the representativeness of the functional constituencies. By expanding the voter base from companies (employers) to individuals (labors), functional constituencies became a 'pseudo-geographical constituencies', which for sure antagonized Beijing. In face of the showdown between the colonial government and Beijing, the conservative and pro-establishment political parties were reluctant to support the colonial government as they did before, fearing that it would offend the 'future master'. Unable to form a stable pro-government alliance, the colonial government was required to seek cooperation from and form *ad hoc* alliances with different legislators on different issues. In other words, a partner on one policy issue might be the 'enemy' on another one. The de-linking between the administration and the LegCo empowered LegCo members, because they had more 'political chips' to engage in the give-and-take political game with the government (Choy and Lau, 1996).

Originally, the operation of the newly-formed LegCo in 1995 would span from the colonial era to 1999 after the handover. However, with Beijing's rejection of the Patten reform, the LegCo could not ride a "through train" and had to be re-elected in 1998 in accordance with the Basic Law. During the 1997-1998 legislative session, the LegCo was replaced by the Provisional Legislative Council (PLC), in which 60 members were selected by a 400-member Selection Committee for the first HKSAR Government. This Selection Committee was also responsible for selecting the first Chief Executive. With the majority of democrats boycotting the PLC election, and due to its closed selection method, many PLC members were pro-establishment. Yet they overturned some important pieces of legislations made by the LegCo from 1995-1997, because they perceived the bills, e.g., the rights of collective bargaining, and the supremacy status of the Hong Kong Bill of Rights over the Basic Law, passed by the democrats in the pre-1997 LegCo as detrimental to Hong Kong's capitalist foundation and executive-led political structure.

Formation and Powers of the Post-1997 Legislature

From a historical perspective, what distinguishes the post-1997 legislature from the pre-1997 one is the emergence of party politics amidst democratization. Table 3 illustrates the evolution of LegCo composition from 1998 to 2012. While the number of total seats in LegCo has remained unchanged from 1998 to 2012, the LegCo's transformations were attributable to the reduction of appointed members since the 1980s, the introduction of direct elections (geographical constituencies) in the early

1990s, and its further expansion from then onwards. With an increase in mandate and representativeness, party-affiliated legislators have started to take sides in policy debates and the scrutiny of various government bills. They often mobilize their supporters outside the LegCo to oppose unpopular government policies. As such, the strength of political opposition has increased considerably both inside and outside the legislature, even though the LegCo is so far not fully directly elected.

Table 3: The Legislative Council's Composition, 1998-2012

Election method	Number of Seats				
	1998	2000	2004	2008	2012
Geographical constituency	20	24	30	30	35
Electoral Affairs Commission	10	6	0	0	0
Functional constituency	30	30	30	30	35
Total	60	60	60	60	70
Source: Lo Shiu-hing, <i>Governing Hong Kong: Legitimacy, Communication, and Political Decay</i> (New York: Nova Science Publishers, 2001), p.166.					

The structure of the post-1997 legislature is prescribed by the Basic Law, which was promulgated in 1990 with the goal of largely maintaining the colonial system, i.e. the executive-led government, of Hong Kong after the handover. Article 73 stipulates the functions, duties and powers of the LegCo. Some of the main elements are outlined below:

1. To enact, amend or repeal laws in accordance with the provisions of this Law and legal procedures;
2. To examine and approve budgets introduced by the government;
3. To approve taxation and public expenditure;
4. To receive and debate the policy addresses of the Chief Executive;
5. To raise questions on the work of the government;
6. To debate any issue concerning public interests;
7. To endorse the appointment and removal of the judges of the Court of Final Appeal and the Chief Judge of the High Court;
8. To receive and handle complaints from Hong Kong residents.

The constitutional powers of the Chief Executive and the LegCo are unparallel. According to Basic Law, the Chief Executive has the power to dissolve the LegCo, while the LegCo has the power to impeach the Chief Executive, but the former is easier done than the latter. Article 50 of the Basic Law prescribes that "If the Chief Executive of the Hong Kong Special Administrative Region refuses to sign a bill passed the

second time by the Legislative Council, or the Legislative Council refuses to pass a budget or any other important bill introduced by the government, and if consensus still cannot be reached after consultations, the Chief Executive may dissolve the Legislative Council." Article 52 of the Basic Law prescribes that the Chief Executive must resign only under the following circumstances: (1) when he or she loses the ability to discharge his or her duties as a result of serious illness or other reasons; (2) when, after the LegCo is dissolved because he or she twice refuses to sign a bill passed by it, the new LegCo passes by a two-thirds majority of all the members the original bill in dispute, but he or she still refuses to sign it; and (3) when, after the LegCo is dissolved because it refuses to pass a budget or any other important bill, the new LegCo still refuses to pass the original bill in dispute. This stipulation means that the Chief Executive has the power to dissolve the LegCo if there is a huge disagreement, before a newly-formed LegCo can exercise its power to remove him or her from office. But so far, such serious confrontation has not taken place.

Constitutionally, after the handover, the Hong Kong LegCo is only expected to retain its powers in policy deliberation and oversight, but its power of initiating policy-making is restrained. Article 74 of the Basic Law stipulates that, LegCo members can only introduce those private bills unrelated to public expenditure, political structure and the operation of the government. Furthermore, before the bills can be introduced, the written consent of the Chief Executive has to be sought. Therefore, the opportunity of introducing a private bill is limited, as the government is reluctant to surrender its powers of policy initiation to the legislature.

This imbalance of power, namely "the government has the power but no mandate, while the LegCo has the mandate but it has no power", is frequently cited as the explanation accounting for the stalemate in executive-legislative relations. The imbalance has been exacerbated after the handover as LegCo has democratized with more legislators being directly elected from geographical constituencies. The popular saying that LegCo is in lack of power is referred specifically to the power of initiating policy change. The policy deliberation and oversight functions of LegCo are often downplayed and belittled, because to many, the worthy battlefield is to initiate policy legislation rather than monitoring and supervising the government. From 1995 to 1997, the colonial government became more tolerant of legislators' political initiatives. This period, however, might be unusual in Hong Kong when the Britain was departing (Ma, 2002: 367).

In fact, a closer and systematic look at the LegCo work points to the fact that the LegCo does have a say in policy-making through policy influence, oversight and financial control. As a local political scientist (Ma 2002: 355-365) accounts, 'policy influence' includes legislation, legislative viscosity (i.e. the number of amendments and the time spent on legislation and policy deliberation in the LegCo), committee work, and motion debates; 'oversight' includes questioning and panel works, no-confidence

motions and investigation powers, and the redress information system through which the LegCo receives complaints from the public about policy matters. For financial control, it is one of the most important powers that the LegCo enjoys in supervising the government budget. The Finance Committee of the LegCo, which comprises of all LegCo members, has the duty and right to examine the estimates of government expenditure and to vote for proposals to change the approved estimates of expenditure presented by the Financial Secretary (Legislative Council of HKSAR, 2010: 1). The LegCo's power to reject the annual budget prepared by the Financial Secretary is an important bargaining chip for members to negotiate with the government.

Policy influence possesses different political tools. While private bill and bill amendment are directly related to policy change, the result of motion debates is not legally abiding, which means that it has no impact on policy even though it is passed. However, quite often, the motions are raised by legislators to express their opinions and stimulate public awareness. For example, every year the democrats put forward a motion debate over the June 4 incident to indicate their commitment to mainland China's democratic movement, and to force the pro-establishment members to reveal their stance. Another example is that, in every year, after the Chief Executive's delivery of the policy address, it is followed by a debate as to whether a 'the motion of thanks' should be passed. 'The motion of thanks', like any motion debate, is merely a political expression and carries no legal implications, but it is a symbolic act indicating the LegCo's views towards the government's performance, and hence illustrating the status of executive-legislative relations.

However, admittedly, the LegCo has limitations in exercising its powers, particularly if democrats want to challenge the government. Apart from the restraints set by the Basic Law on LegCo's power, the political reality suggests a rather bleak picture for LegCo members to initiate policy change. Central to this is that the influence of the geographical constituencies members is hampered by the 'separate voting mechanism'. For an amendment or motion proposed by the LegCo member to be passed, it has to be approved by the simple majority in both geographical and functional constituencies. The political reality is that, after the handover, the pro-establishment can secure the control of LegCo by dominating the seats in the functional constituencies while checking the number of seats occupied by democrats in the geographical constituencies. For instance, in the 2008 LegCo election, democrats won 19 seats out of 30 in geographical constituencies but only 4 seats out of 30 in functional constituencies. With the majority of pro-establishment legislators in functional constituencies, many amendments which get passed in geographical constituencies are blocked. Since legislators returned from the geographical constituencies possess a greater mandate and have enjoyed higher popularity and public approval ratings,¹ it is frustrated for them when their power is checked by their counterparts in functional constituencies.

Due to the majority of pro-establishment legislators in LegCo, the LegCo President,

who is elected by the LegCo members, is always a pro-establishment figure, firstly Rita Fan (1997-1998 and 1998-2008), who is now a member of the Standing Committee of the National People's Congress, and secondly Tsang Yok-sing (2008-2012), the former Chairman of the pro-establishment Democratic Alliance for the Betterment and Progress of Hong Kong (DAB). Quite often, their rulings in blocking the introduction of private bills, bill amendments and motion debates are perceived as a protective umbrella for the government.

The Power of LegCo vis-a-vis the Tung Administration: 1997-2005

The Tung Chee-hwa administration was generally conceived as a failure. After the handover, Hong Kong was hit hard by the 1997-1998 Asian Financial Crisis, the subsequent burst of the private housing bubble, and the 2003 Severe Acute Respiratory Syndrome (SARS) Disease, just to name a few. Since 1997, the Hong Kong people have high expectations for the SAR government, given their relatively high living experiences under the final years of the colonial rule. According to a survey conducted in June 1997, 68.6% of Hong Kong people said they were somewhat or very satisfied with the British colonial rule, only 7.2% said they were somewhat or very unsatisfied with it (Chung et al., 2000). In assessing the contributions and mistakes of the colonial government with regard to the development of the society, 64.5% of Hong Kong people said that it offered "more contributions", while only 2.9% said it committed "more mistakes" (Chung et al., 2000). But with all these crises, the glory of the colonial legacy suddenly came to a halt. The inability of Tung to deal with these crises undermined Hong Kong people's confidence in his government and their belief in the 'one country, two systems'.

Numerous factors account for the failure of the Tung administration. From a political economy perspective, the governance crisis after the handover originated not only from rising public discontent but also due to the failure of building a stable state-business alliance, which took the form of a strong governing coalition in colonial rule (Lui and Chiu, 2007). From an institutional perspective, the governance crisis was due to the "institutional incongruity" or "institutional incompatibility" after the handover, when the well-established colonial political practices, such as the adoption of non-interventionist economic policies and fiscal conservative economic ideas which are highlighted in the Basic Law, could no longer deal with the socio-economic changes, whereas the post-1997 government has been hard-pressed to demonstrate its leadership and to perform a steering role (Cheung, 2005; Lee, 1999). From an administrative perspective, the executive-led governance has been "hollowed out" due to external political challenges (from politicians and civil society) and internal fissures (i.e. failure of absorption of elites, and the fight between civil service and the executive). Moreover, the inability of the political society in mediating the state-society relations (Ma, 2007) and the administration's communication crisis also led to the governing failure (Lo, 2001). The post-1997 government has little resemblance to the administrative state in

the colonial era, which was characterized by its efficiency in a vibrant market environment. The shrinking of state capacity has finally culminated in a governance crisis (see Cheung, 2004, 2007a). And among all, the "disarticulation" (Scott, 2002) between the executive and the legislative was conceived as one of the contributing factors.

Failure in Rebuilding the Governing Coalition

Before the governance crisis, Tung tried several means to rescue his ailing administration. The first act was to increase his administrative power. Since the beginning of the second term in mid-2002, the government implemented the 'Principal Officials Accountability System', with all government bureau heads changing from civil servants to politically-appointed officials. Under the system, the bureau heads have to be accountable directly to the Chief Executive, while previously they were mostly accountable to the head of the civil service, namely the Chief Secretary. The second move was to strengthen the executive-legislative relations. The Tung administration resumed the linkage between the ExCo and the LegCo in order to build a strong and stable political partnership with its LegCo allies. In his two terms (1997-2002 and 2002-2005), Tung invited legislators from the two major pro-establishment parties in LegCo to become non-official ExCo members, such as DAB legislators Tam Yiu-chung and Tsang Yok-sing, and pro-business Liberal Party legislators James Tien Pei-chun and Selina Chow.

With the benefit of hindsight, Tung's moves failed to rejuvenate his governance. The strengthening of the executive-legislative relations was misplaced, because legislators being co-opted into the ExCo were not the critical and most oppositional ones in LegCo, namely the democrats. Executive-legislative relations remained stressful as there was no bridge built between the establishment and democratic camps. Even worse, pro-establishment legislators were reluctant to support the government unconditionally. Most notably, in the 2003 debate over Article 23 on national security,² which the democrats viewed as a threat to civil liberties, the resignation of James Tien as ExCo member in face of strong negative public opinion against the legislator was critical to the Tung government's fragile coalition collapse.

It was no doubt that Tung's vision of building a strong governing coalition in LegCo failed. The major difference between the co-option strategies in the colonial era and the post-handover era is that being appointed to the ExCo now is devalued, as nowadays political parties have to cast their covetous eyes on LegCo's directly elected seats. In this regard, not all pro-establishment legislators are content with the executive-led government, which often regards them as a rubber stamp and makes them the scapegoat of failed government policies in the eyes of the general public. For instance, after the DAB's huge defeat in the District Council election in late 2003 following the half a million people protest on 1 July, Tsang Yok-sing had to step down from the

chairmanship and he described the DAB's partnership with the government as "sharing the shame but enjoying no pride". Clearly, the pro-government alliance was unhappy with the administration.

In sum, the executive-legislative relations under the Tung Administration could only be described as shaky, unstable and weak, for both sides accused each other for policy errors and governing failures. Finally, in March 2005, Tung Chee-hwa had to resign in the name of health concerns.

The Power of LegCo vis-a-vis the Tsang Administration: 2005-2012

After the resignation of Tung Chee-hwa, the former Chief Secretary Donald Tsang, a career bureaucrat, was selected as the replacement and later succeeding Chief Executive. The general perception was that, Beijing hoped that his administrative experience could rejuvenate a strong administrative state with efficient governance by bureaucrats (Cheung, 2008). Though not democratically elected, Tsang was conceived by the public as a relatively suitable successor, as his public approval rating was at times higher than 70 percent. Recognizing his perceived strength, Donald Tsang delivered his first policy address in 2005-2006, with the theme of "Strong Governance for the People". In his vision of 'strong governance', Tsang highlighted the importance of harmonious executive-legislative relations:

In full recognition of the status, powers and functions of the Legislative Council, my colleagues and I will strengthen communication with Honorable Members, let them understand our thinking on policy and legislation as early as possible, listen to their views, and foster co-operation. As long as the Executive Authorities and the Legislative Council exercise their powers and perform their functions as laid down explicitly in the Basic Law, they will complement each other and operate with due checks and balances. The issue of one bypassing the other does not arise. (Tsang, 2005: para 10)

His pledge for strong governance was anticipated, but this rhetoric failed to be translated into practice; the fragile executive-legislative relations were an undeniable factor. In terms of strengthening the executive-legislative relations, Tsang did no more than Tung, as he only followed Tung's approach of co-opting some pro-establishment legislators into ExCo, such as DAB legislator Lau Kong-wah. To many people's surprise, he even made it clear that his co-option strategy showed preferential treatments for his closest allies while opponents were bound to be excluded. This polarizing co-option strategy backfired. In his first term (2005-2007), Tsang failed in some major initiatives — most notably the political reform plan in 2005, West Kowloon Cultural District, the goods and services tax — all due to LegCo's opposition.

These policy failures demonstrated tense executive-legislative relations in different ways. First, the case of West Kowloon Cultural District (WKCD) committed the same

mistake that Tung made in assuming that a major bill could be easily passed in the LegCo with the support of pro-establishment legislators without paying attention to public opinion. The WKCD is a landmark construction project, which intends to enhance the cultural competitiveness and status of Hong Kong. However, the government's decision of issuing a single tender to a particular real estate developer, together with other disputes about the artistic design and the proportion of estate and commercial buildings in the district, drew severe criticisms and led to allegations of government-business collusion from the public. Under this social atmosphere, LegCo passed a motion debate with the support of the democrats and pro-establishment legislators in January 2005 to rescind the decision of single tender. Recognizing that the bill had no hope of passing in LegCo, the government withheld the project.

Second, the debate over political reform aggravated the political disagreement between the government and democrats. In 2004, the Hong Kong government unveiled a political reform package on the election methods for Chief Executive in 2007 and the LegCo electoral arrangements in 2008. As the proposals were criticized as being too conservative, the government tried hard to secure a few votes from some moderate democrats to achieve a two-thirds majority votes in LegCo to get the bill passed. The democrats were united in opposing the bill. After their veto of the political reform package, the government began to label the democrats as the "opposition". In liberal and multi-party democracies, political 'opposition' is a neutral term and has no negative connotation, since it merely refers to the party which is not in power. But in Hong Kong, the government attempts to frame the 'opposition' parties for "being oppositional just for the sake of opposing" but not acting constructively and responsibly. This negative labeling irritated the democrats who regard Beijing and the HKSAR governments as violating their promise of achieving universal suffrage in the HKSAR.

Third, the goods and services tax debate illustrated the government's unstable partnership with its LegCo allies, especially the pro-business elites. In the 2005-2006 budget, the government proposed raising a goods and services tax to broaden the tax base, which met huge resistance in LegCo. The pro-establishment and pro-business Liberal Party refused to lend its support to the bill because it feared the business sector would be hampered, while other pro-establishment parties and the democrats opposed severely by citing the regressive nature of the tax and by insisting that the new tax would be unfair to the middle and working class. In 1999-2000, the Liberal Party had already opposed the Tung's government's idea of levying a land departure tax and a sales tax (Ma, 2002: 364-365). Despite being the government's ally, the pro-establishment parties are not the government's puppet in LegCo; but they have their own agendas driven by self-interests. In face of LegCo's united opposition, the government withdrew the tax plan.

Because of these failures in his first term, Donald Tsang's image of being a strong and an efficient leader was severely tarnished. Hence, he claimed in his second term

that he would repair the executive-legislative relations. In the 2007-2008 policy address, Tsang said: "A good relationship between the Executive Authorities and the Legislature is conducive to smooth governance, high efficiency in policy implementation and a harmonious society" (2007: para 108). In the 2008-2009 policy address, Tsang highlighted that improving the relationships between the executive authorities and the legislature was critical to effective governance and social harmony, alongside with the need to improve the political appointment system and the electoral methods for 2012 and to enhance the quality of public services and public engagement (Tsang, 2008: para 117).

Although Tsang downplayed his governance rhetoric from "strong governance" to "smooth governance", success was not ensured. For example, in 2008-2009, the government only submitted 27 bills to the LegCo for deliberation and voting. Many controversial bills, such as the Competition Bill, the Employment (Amendment) Bill, and the Motor Vehicle Idling (Fixed Penalty) Bill, etc., were not put forward to the LegCo. Some bills that were submitted to the LegCo had to seek its financial approval. Recognizing the public demand for increased government spending to help the poor and the middle class, in 2011 and 2012, when elections were held District Councils and LegCo, the LegCo rejected a number of funding applications deemed to be out of touch with the public. For instance, in January 2011, LegCo's Financial Committee vetoed the government's HK\$ 6 billion funding request for the 2023 Asian Games, with 40 veto votes and just 14 affirmative votes. In December 2011, the Education Bureau's application for a HK\$42 billion funding for financing the eight government-subsidized higher education institutions for the academic year 2012/13 to 2014/15 was rejected, because it refused to freeze an increase in tuition fees in that period. In January 2012, the government backed down by accepting the legislators' demand on higher education tuition fees. In both incidents, opposition parties casted the veto votes, while some pro-establishment legislators also joined forces, thus crippling the government's power.

The challenge for the Tsang administration to consolidate the support of pro-business legislators in the LegCo was more daunting. In September 2011, twelve pro-business and pro-establishment legislators formed a loose alliance,³ making it the largest political group in LegCo. On the one hand, the consolidation of pro-establishment force offered the government a more stable working partner, which could save the regime's efforts to lobby each legislator for support. But on the other hand, on issues unfavorable to pro-business legislators, the government would have difficulties seeking their support, especially when pro-business legislators pointed fingers at the government, accusing it of violating the 'big market, small government' principle in some legislations, notably the legislation of minimum wage and the Competition Bill. In pushing the Competition Bill, which intends to fight against market monopoly, the democrats supported the government, while pro-establishment legislators, especially those with business background, vehemently opposed it, with the cooperation of powerful business unions and representatives of small and medium-sized enterprises.

At the end of the Tsang administration in 2012, the Chief Executive was exposed by the mass media for accepting favors from some Hong Kong business people without declaring his interest. The incident aroused public anger and Tsang himself had to set up a committee chaired by the former Chief Justice Li Kwok-nang to investigate his possible wrongdoing. The committee found that the Prevention of Bribery Ordinance had a loophole of excluding the Chief Executive from the scope of investigation and prosecution. By the time Tsang left the HKSAR government on June 30, 2012, and when he was succeeded by the new Chief Executive Leung Chun-ying, his credibility and image were tarnished severely.

Due to the lame duck nature of the outgoing Tsang administration, Leung's attempt at reorganizing the POAS system by expanding the number of secretaries from three to five was rejected by the LegCo members, who believed that such a reorganization plan should not be rammed through the legislature, especially before the September 2012 LegCo election. Due to the credibility problem of Tsang, and his relatively weak administration in June 2012, Leung's reorganization plan was not approved by LegCo and he had to wait for the politically ripe time to reintroduce his restructuring blueprint to the legislature. After Leung became the Chief Executive on July 1, 2012, he and his subordinates slowly introduced an expanded version of the POAS, including undersecretaries and political assistants. The cautious way in which he tackled the slightly expanded version of the POAS demonstrated that his autonomy was quite constrained.

In a nutshell, the two administrations after the handover have pledged to achieve harmonious executive-legislative relations, but both failed. Not only did they fall short of tempering the relationships with democrats and allies, their constant tensions also rose from time to time, thus hampering efforts at building a strong governing coalition and to shoring up political legitimacy.

Democrats' New Means of Opposition

To the Hong Kong government, the legislature has been too assertive and uncompromising in opposing its policies, but at the same time, some of the pro-democracy voters have found their legislators too gentle and supportive of the administration, failing to constitute strong checks and balances. Therefore, a "radical" fraction within the democratic camp has emerged in recent years. The rise of "radical" politics after 2006, with the establishment of the leftist League of Social Democrats, has posed a new challenge to executive-legislative relations. Not only did it mobilize social movements, but it also launched demonstrations inside the LegCo by throwing bananas and hurling verbal abuse at government officials. Always citing Taiwan's Legislative Yuan as a reference point, the "radical" legislators argue that their protests have precedents, and their protests are justified due to the "unfair" political system.

The emergence of "radical" politics has implications for the role of LegCo as

perceived by the public. The "radical" politics has tapped into the mentality of some democratic voters, who have found the traditional way (e.g. British gentleman-style) of legislative politics futile and who believe that the representative democracy epitomized by LegCo is no longer working for the general public. Hence, "radical" politics is a viable and attractive alternative to them.

The emergence of "radical" politics has altered the LegCo landscape in such a way that the LegCo has been further polarized. For instance, in early 2010, Hong Kong was overwhelmed by a heated debate over the need of Hong Kong to build an over HK\$60 billion high-speed railway connected to the mainland. The opinions of the public towards the construction were split,⁴ so did the LegCo members'. The pro-establishment legislators emphasized the need for economic development, especially Hong Kong's economic integration with mainland China, while the democrats countered with the reasons of procedural justice, environmental conservation, and the careful use of taxpayers' money. To challenge the government's move and undermine the legitimacy of the construction project, the democrats used various tactics to postpone and obstruct the LegCo's voting procedure by making endless bill amendments. Their tactics were echoed by other social activists and citizens surrounding the LegCo building. They were staging festival-like demonstrations for days. Despite the democrats' 21 veto votes, the high-speed railway project was approved with 31 affirmative votes mainly by pro-establishment legislators.

Another controversial act of democrats in the LegCo was the 'pseudo-referendum' movement amidst the political reform debate in 2010. Led by the League of Social Democrats and Civic Party — a middle-class party led by many lawyers — the 'pseudo-referendum' movement intended to have five legislators resigning in order to trigger by-elections, which could be seen as a test of the mandate of the two parties whose LegCo members resigned. To the two parties, the movement was a creative oppositional tactic — using the LegCo seats to push for a political movement and to garner public support as bargaining chips for subsequent negotiations with the government. But to Beijing and the Hong Kong government, the two parties were exploiting a "loophole", and the movement was a provocative act, especially the use of a sensitive term like "referendum" that to Beijing referred to Hong Kong as a separate political entity.

The late 2000s has witnessed some political tactics neglected by LegCo members. However, these tactics backfired quite immediately. For the 'pseudo-referendum' movement, although the five resigned legislators were eventually re-elected, it was generally perceived as a failure with the low turnout vote of about 17%. In the 2011 District Council election, the democrats suffered a loss, with seats going down from 99 (in 2007) to 83. The so-called defeat was interpreted as partially due to public dissatisfaction with the political strategies and personal behaviors of both the "radical" democrats inside and outside LegCo and the democratic camp. Although the Hong Kong people are generally dissatisfied with the government's performance, they

disapproved of the adoption of "radical" means both inside and outside LegCo. According to a survey, a majority of citizens (65.8%) regarded the use of physical conflicts and occupation of roads during protests as "radical" behaviors. Most citizens (62.2%) opposed these actions, while only 17.4% approved them (Hong Kong Institute of Asia-Pacific Studies, The Chinese University of Hong Kong, 2011). Before the 2011 District Council election, the moderate democrats, mainly legislators from the Democratic Party, attempted to distance themselves from their radical colleagues, but to no avail. In May 2011, the moderate democrats joined forces with the pro-establishment legislators to pass an amendment to LegCo's Rules of Procedures, which grant the chairpersons of all panels the power to expel "misbehaved" members from the meeting. Prior to this rule change, such power was only conferred on the LegCo president. After the 2011 District Council election, some members of the public demanded that the moderate democrats should sever their ties with the "radical" counterparts so as to regain the trust of the public.

Before the Chief Executive-elect C. Y. Leung tried to get his reorganization plan of the POAS approved by the LegCo in June 2012, some "radical" democrats such as Raymond Wong and Leung Kwok-hung had already deployed filibustering tactic to first prevent the Tsang government from having a new by-election blueprint being approved by the LegCo. Although Wong and Leung failed to stop the government from rushing the by-election plan, which would prevent any legislator who resigns from LegCo to run again in any by-election for the legislature, their action prompted the LegCo chair Jasper Tsang to restrict the time limit of the filibusters. In response to Tsang's discretion, Leung and Wong took the case to the court for judicial review. However, the court judge Lam Man-hong in June 2012 declared that due to the principle of separation of powers, the court did not intervene in the decision made by the LegCo President. Due to the tendency of judicial passivism of the court judge, who interpreted the tenet of separation of powers as non-interference with the LegCo President's discretion of constraining the time limit of the LegCo filibusters, Leung and Wong's judicial review failed. Yet, the entire saga illustrated the bitter struggle between the legislators and the executive branch. It also demonstrated that some pro-democracy legislators had to resort to judicial channel to challenge the legitimacy of the decision made by the LegCo President regarding filibustering action inside the legislature.

Although C. Y. Leung was eventually elected as the Chief Executive in the March 2012 Chief Executive elections in the HKSAR by securing 689 votes out of 1,132 voters in the Election Committee, his legitimacy has been constantly challenged by the pan-democrats, oppositional activists and the mass media. They focused on his home's illegal structures and severely criticized some appointees made by Leung under the POAS arrangements. Just twelve days after being appointed as the Secretary for Development, Mak Chai-kwong had to resign in the midst of the investigation by the Independent Commission Against Corruption over his alleged attempt at claiming housing allowances through cross-lease arrangements with another civil servant almost

twenty years ago. The Mak incident de-legitimized the Leung administration, while the newly elected Chief Executive has been severely criticized by the mass media and pan-democrats for his home's illegal structures since he took office on July 1, 2012. Public distrust of both the Leung administration and the Chief Executive has not been conducive to the process of legitimacy-building of the new HKSAR government, not to mention the rocky executive-legislative relations, which are arguably a reflection of the mutual mistrust between the government and the pan-democratic opposition.

After the September 2012 LegCo elections, when the democrats secured 27 out of the 70 seats, their confrontational tactics and bargaining power have increased. They tried to initiate a motion to impeach the Chief Executive for his home's illegal structures, but their attempt failed. Of the 34 geographical constituency legislators present, 14 opposed the motion moved by the Democratic Party member Wu Chi-wai, 18 voted for it and one abstained (Luk, 2012:9). Of the 33 functional constituency legislators present, 20 opposed the motion, nine voted for it and four abstained. Since the motion needed to be passed by both sectors, it was blocked by the pro-government legislators elected from functional constituencies. The implications are clear: as long as the functional constituencies are maintained, pro-government forces can act as a powerful check against the increasingly assertive pro-democracy legislators. If so, the central government in Beijing would likely continue to see the persistence of functional constituencies as an effective blockage of any attempt by the pan-democratic front to challenge the "executive-led" administration and grasp political power.

The deadlock of political reforms

In face of the tense executive-legislative relations, political reform is arguably a solution; nevertheless, as mentioned above, any drastic reform along the line of abolishing functional constituencies or reducing their number will very likely arouse the concern and opposition from the central government. Furthermore, the business sector which dominates the functional constituencies tends to see a fully directly-elected legislature as detrimental to the interest of the business people and beneficial to the interest of the working class only. Due to the concerns from Beijing and the business class, political reform in the HKSAR is bound to be controversial and protracted.

However, there is still room for minimal political reform at least in the short run. As stipulated in the Chief Executive Election Ordinance, the Chief Executive cannot be a member of political party. At present, the Chief Executive does not rely on any dominant party in LegCo to support his bills and policies. Hence, seeking a stable governing coalition remains a hard task. Since the late 1990s, different solutions have been proposed. The first option is to co-opt more pro-establishment legislators to the ExCo. But as shown in the experiences of the Tung and Tsang administrations, this option was futile as most government bills and policies were not guaranteed to be approved by LegCo, including pro-government parties. If the HKSAR needs to develop

political parties as a precondition for further political reform, ideally the Chief Executive can be allowed to be a political party member. In reality, previous candidates participating in the Chief Executive elections, such as Alan Leong of the Civic Party in 2007 and Albert Ho in 2012 (both defeated in the two Chief Executive Elections) were already allowed to be affiliated with political parties, but a more progressive step in amending the Chief Executive Election Ordinance can arguably be considered in the next Chief Executive elections.

The second option is the Chief Executive's target at some moderate democrats, such as legislators from the Democratic Party, in the selection of the members of the Executive Council in the future. But bound by the values that they steadfastly uphold, the democrats have long rejected the idea of joining the governing coalition for fear that it would become an unconditional endorsement of the undemocratically elected Chief Executive. Moreover, once being a member of the governing coalition, they would have to honor the confidentiality agreement of ExCo's internal discussions and to shoulder the collective responsibility of policy decisions. Therefore, they would no longer perform the role of opposition.

Still, a few moderate democrats can be considered by the Chief Executive and his think tank when appointments to the Executive Council will have to be made. Arguably, a deadlock in executive-legislative relations can be broken if a few moderate democrats were appointed to the Executive Council, thus serving as a bridge narrowing the communication gap between the executive and the legislative branches. Indeed, as Chris Patten had long realized in 1993 when he put forward his controversial political reform package, this coalition model of involving more directly elected legislators into the Executive Council would likely transfer the debates from the legislature into the top policy-making body. However, the advantage of this coalition model is that it is real rather than the current practice of the Leung administration in appointing overwhelmingly pro-establishment elites into the Executive Council. In other words, the present patronage or spoil system in the HKSAR at the level of the Executive Council is by no means conducive to a harmonious executive-legislative relationship.

Other relatively less discussed options being proposed by politicians and academics include: (1) co-opting politicians from different parties to become appointed officials who would be held more accountable to the public; (2) encouraging the Chief Executive and bureau heads to attend more LegCo meetings and consult LegCo before presenting bills in legislature (Tsang, 2003); (3) establishing institutionalized communication channels between the government and LegCo, such as forming strategic legislative groups within each bureau to undertake policy formulation and negotiations with LegCo members (Fong, 2008). However, no major changes have been made. Finally, the most ideal option is to allow the formation of ruling party elected by universal suffrage. But it is obvious that this option is impossible to be implemented, at least in immediate future, for Beijing does not wish to envisage fully-fledged party politics in

Hong Kong. Suffice to say that Hong Kong has come to a political deadlock, and political reform is always easier said than done.

Needless to say, apart from the need to implement political reforms, the HKSAR government has to enhance its efforts at promoting and explaining government policies to the members of the public. The policy of national education, which had been promoted by the Leung government to the public in an insufficient manner, became a political campaign issue before the September 2012 Legislative Council elections. Although the Leung administration made concessions to the oppositionists just one day before the legislative elections, it demonstrated the inadequacy of governmental efforts at explaining and promoting policies to the public. If political reform is not accompanied by better efforts at selling government policies, the HKSAR government's legitimacy will continue to be challenged easily by both the pan-democratic forces and the ordinary people.

Beijing government's straitjacket: the "executive-led" political structure

The above analysis focuses on the operation and powers of LegCo vis-a-vis the HKSAR government. To the dismay of many who see democratization as the panacea of improving the legitimacy and powers of the LegCo and hence ameliorating the tense executive-legislative relations, Beijing has adopted a relatively distrustful attitude towards LegCo in particular and universal suffrage in general. However, the lack of democratic reform is exactly the crux of the problematic relationships between the government and oppositional democrats.

After 1997, Beijing has built a number of roadblocks in democratic reform. The two major blocks were made by the Standing Committee of the National People's Congress (NPCSC). In 2004, it ruled out the possibility of universal suffrage of the 2007 Chief Executive election and the 2008 LegCo election. In 2007, the NPCSC eliminated the possibility of double direct elections (of the CE and LegCo) in 2012 by stating that there would perhaps be the universal suffrage of the Chief Executive in 2017, and after that, members of the LegCo would perhaps be directly elected. Following the NPCSC's decisions, the Hong Kong government could only adopt ambivalent rhetoric on democratic reform and produce modest, or conservative, proposals. Not only has it irritated the "radical" democrats, but it also alienated the moderate ones.

The rejection of a fully-elected legislature indicates that Beijing is wary of the transformation of political regime from being executive-led to legislative-led. Although the legislature has long been politically polarized, cooperation between pro-establishment legislators and democrats is possible. Apart from the formation of *ad hoc* strategic partnerships, one of the striking moves under the Tung administration was the formation of the so-called "alliance of eight parties", which mainly serves as a platform

for both sides of the aisles to exchange views on livelihood issues during economic recession times. However, under the pressure of the Hong Kong and Beijing governments, the alliance was finally disbanded (*Apple Daily*, 7 February 2002). In a word, the loss of executive power is what Beijing is most concerned about.

Beijing is also deeply concerned about the idea of separation of powers, even though LegCo's powers are already constrained by the Basic Law. In the mind of Beijing, an executive-led regime is essential to the stability and long-term prosperity of Hong Kong, and thus should be unassailable. In this line of thought, the "ideal" political arrangement is that the Hong Kong government, where the top leader is indirectly elected and is under the control of Beijing authorities, is superior to other powers, namely the legislature and the judiciary. Not only should the two powers be subordinate to the executive, but they also have to be co-operative. However, this idea of "cooperation of powers" runs contrary to Hong Kong's core value of "separation of powers". In early July 2008, during his visit in Hong Kong, Vice Premier Xi Jinping delivered a political message that touched the nerves of pro-democracy politicians and the legal professions. He first affirmed the importance of the executive-led governance style of the HKSAR government by urging it to be united and efficient. What was provocative was that, by "unity", he referred to the "mutual understanding and support of the executive, legislature, and the judiciary" (*Ming Pao*, 8 July 2008). In 2009, during the tenth anniversary of Macau's return of sovereignty to China, a senior official of the Hong Kong and Macao Affairs Office of the State Council praised the success of the 'cooperation of powers' in Macau, which was interpreted by Hong Kong human rights advocates and pro-democracy politicians as an innuendo directed against Hong Kong (*Ming Pao*, 11 November 2009).

In the same vein, the rhetoric of "judiciary dominance/hegemony challenging the executive-led government" can increasingly be heard from the pro-establishment forces. With limited power in LegCo, more political parties and politicians use judicial review to resist or perhaps overturn those policies that could not be vetoed in LegCo. A notable example was the government's decision to privatize public housing facilities by setting up a real estate investment fund (in 2004). Another case was about the Interception of Communications and Surveillance Ordinance, which prescribes the legal foundations for public officers to carry out interceptions of communications and covert surveillance (in 2006). In both cases, some democratic legislators were deeply dissatisfied with LegCo's approval of the government's decisions, and decided to take the cases to the court. In Cheung and Wong's wordings, judicial review has now become "a new arena of political bargaining and game-play" (Cheung and Wong, 2006: 131) between the government and politicians and ordinary citizens. After all, the increased adoption of judicial review, whether assisted or carried out by legislators or not, has shown the public dissatisfaction with the government and its frustration at LegCo's inability of blocking unpopular policies.

The need for trust and 'responsibility politics'

Due to the fact that the pro-democracy legislators elected from both geographical constituencies and functional constituencies distrust the political leaders of the HKSAR government, and that the latter also distrust the former by refraining to appoint at least a few moderate democrats into the ExCo, executive-legislative relations in the HKSAR are destined to be controversial, confrontational and conflict-ridden. Yet, trust-building is not an easy process given the fact that some pro-establishment elites view the democrats, especially the "radical" ones as "troublemakers" stirring up all the confrontational moves inside and outside the legislature. The mutually distrustful relationships are not conducive to a harmonious executive-legislative linkage and developments. Compounding the current political impasse are the divisions between the moderate democrats and the radical ones, and also the distrust between the pro-C. Y. Leung camp and the pro-Henry Tang forces since the 2012 Chief Executive elections. The pro-Henry Tang camp has been supported by influential business people, who do not fully trust the HKSAR government led by Leung. On the one hand, the political fragmentation of the pan-democratic camp has already made legislative politics difficult and controversial. On the other hand, the disunited pro-government camp has also rendered the executive branch relatively weak, leaving the task of promoting and explaining government policies to a batch of comparatively inexperienced political appointees under the POAS. In particular, when a few appointees belonging to the POAS have their integrity questioned and challenged by the mass media and members of the public, the entire legitimacy of the Leung administration has been undermined. As a result, there is a vicious circle of public distrust that brings about a relatively weak executive branch of the government, whose authority has been unfortunately undermined by the assertive mass media that target at the ethical conduct and integrity of a few appointees under the POAS.

To the executive, a weak and fragmented legislature is a double-edged sword. On the one hand, it helps the government to maintain control of the policy-making process by preventing the opposition from taking up a leading role to direct the course. But on the other hand, without the possibility of becoming the government, pro-democracy and opposition as well as pro-regime legislators are free from their political responsibilities, because the easiest job for them is to criticize the government instead of proposing serious and feasible policy ideas (Li, 2001: 94). Therefore, in recent years, some media and political commentators have been calling for a kind of "responsibility politics", which can be actualized through universal suffrage (*Ming Pao*, 20 July 2009). In the view of the advocates, "responsibility politics" is a rejection of "conviction politics" of the past so that politicians, despite facing many political hurdles, should not be satisfied with merely stating their political beliefs, but taking pragmatic actions against the odds (Chan, 2009). As political scientist Anthony Cheung, a former democratic legislator in the colonial era and an ExCo member after the handover, has argued, the most essential thing is that legislators, whether the pro-establishment or oppositional ones, should not

simply cling to their partisan positions but to make serious policy deliberation through strengthening ties with academics and professionals, conducting thorough consultations with interested parties before proposing a bill, and fostering community-wide debate and discussion. Only by doing so can the legislators shatter the myth that LegCo is useless, and then the government cannot resist cooperation with LegCo (Cheung, 2007b: 39-40).

Conclusion

Unless the HKSAR political system is democratized further so that the ExCo would perhaps reflect at least some degree of public opinion by co-opting a few directly elected legislators, especially those from the pan-democratic camp, the tense and conflict-ridden relationships between the executive and the legislature are bound to persist in the HKSAR. At present, the executive branch, especially the ExCo, had no representative from the pan-democratic forces. The end result is a confrontational relationship between the LegCo and ExCo, with the directly elected pro-democracy legislators seeing the ExCo as a blind supporter of the Leung government. In particular, the "radical" democrats, who performed impressively in the September 2012 LegCo elections, regard the existing executive-legislative impasse as the outcome of an "undemocratic" political system not only biased in favor of the business elites but also filled with overwhelmingly pro-government and pro-Beijing elites without sufficient communications with the pan-democratic front. Compounding the existing deadlock in executive-legislative relations is the internal division among the democrats, with the moderate democrats seeing the "radical" colleagues as "troublemakers," while the "radical" democrats regarding the moderates as selling out the people of Hong Kong in 2010 because of a political compromise over the pace and scope of democratic reform between the moderates and the central government in Beijing.

The dynamics of executive-legislative discord in the HKSAR are very complex. They include the weakness of the government attempt at promoting policies, the controversial nature of the appointees made under the POAS arrangements, the assertive mass media, the aggressive oppositional tactics, the need for politicians to appeal to voters' support through the mobilization of anti-governmental forces, the harmful legacies of a bitter struggle between C. Y. Leung and Henry Tang in the March 2012 Chief Executive election, the patronage system of appointing political elites into the Executive Council, and the structural difficulties of reducing the number of functional constituencies in the Legislative Council because of the twin opposition from Beijing and the business class. The quest for solutions is by no means easy, but short-term and minimal political reform in the direction of appointing at least a few moderate democrats into the Executive Council, as this article has argued, can be considered. Other necessary reforms embrace the need to develop political parties and to build up the legitimacy of the HKSAR government through better public explanation, promotion and consultation of government policies.

The battles between LegCo and the government have no absolute winner and loser. Despite Hong Kong's constrained executive-led political structure, it is always simplistic to jump to the conclusion that LegCo is entirely a toothless institution, for some new political tools and resources inside and outside the legislature are deployed by legislators to shape policy-making and monitor policy implementation. Such checks and balances can be seen through bills amendment, motion debates, political movements, filibustering, no-confidence motion, and judicial reviews. All these tactics may not work every time, but at the very least, they have raised the political consciousness of ordinary citizens on current affairs, which would have impacts on government policies in the long run. Most importantly, the government has become far more cautious in its policy initiatives, trying its best to respond to the critical demands from the democrats while securing the staunch support of the pro-establishment forces.

The conventional interpretation of executive-legislative relations in Hong Kong from the colonial to the post-colonial one is that the executive is far more dominant than the legislative branch. However, as this article illustrates, the executive-led nature of the HKSAR regime hides a number of important issues: (1) the legislature does have significant inputs into the policy-making process and can check and scrutinize governmental policies; (2) opposition within and outside the legislature can act as a powerful check against government policies that are deemed as unpopular; (3) the absence of party rule in Hong Kong means that the executive branch is dominated by a seemingly no-party coalition but with a loose alliance of pro-government parties inside the legislature; and (4) this relatively disarticulated executive-legislative relations can be traced historically to the drafters of the Basic Law who in 1985-1990 did not foresee the gradual growth of party transformations and political development in Hong Kong after 1997, namely the emergence of new political parties and stronger social call for democratization.

Nevertheless, the problematic and conflict-ridden executive-legislative relations in Hong Kong need not be exaggerated, because the phenomenon is surely not unique in Hong Kong. The political interplay between the executive and the legislative is not always a zero-sum game. A low approval rating of the government does not necessarily imply strong public support for the legislature, and vice versa. As the Hong Kong people are politically pragmatic, what they want are less political showdown but more practical solutions to problems, yet such solutions could not be produced without cooperative and harmonious executive-legislative relations. Ultimately, in a free and open society like Hong Kong, though there is still no universal suffrage that selects both the entire legislature and the Chief Executive, both the government and LegCo have to respond to public opinion, and they are required to adapt to the changing circumstances for the benefits of both the society and polity. It is imperative for the government to build up the trustful relations with not only all legislators, especially the pan-democratic ones, but also members of the public through a rigorous demand on the performance and integrity of the appointed members under the Principal Officials Accountability

System. It is also urgent for the Leung administration to engage those who have strong views on government policies. If so, governmental adaptation to "radical" tactics adopted by some pro-democracy legislators, and governmental responses to the persistent public opposition to unpopular policies, will continue to mark the evolution of executive-legislative relations in the years to come. In short, mutual adaptation amidst confrontational politics, serious mistrusts, and occasional policy paralysis due to fierce opposition will very likely continue to shape executive-legislative struggles in the HKSAR in the foreseeable future.

Notes

1. Details of the public opinion polls can be referred to the "Ratings of Top Ten Legislative Councillors" conducted by the Public Opinion Programme of the University of Hong Kong, www.hkpop.hku.hk, accessed on 1st Feb 2012.
2. Article 23 of the Basic Law stipulates that: The Hong Kong Special Administrative Region shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People's Government, or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.
3. The alliance was formed by of legislators from three pro-business groups in LegCo: Liberal Party, Professional Forum, and Economic Synergy.
4. Public opinions about the construction of high speed railway varied as indicated in different public opinion polls. The poll conducted by the Public Opinion Programme of the University of Hong Kong indicated that 47% of interviewed citizens supporting the construction. But the poll conducted by the Bauhinia Foundation, a think tank with close ties with the government, indicated that a supporting rate of 69.1% (*Ming Pao*, 9 January 2010).

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Perspectives of Teachers on the Implementation of Inclusive Education for Ethnic Minority Students in Hong Kong

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Abstract

Although there has been an increase in the number of local studies targeting ethnic minorities in the last decade in Hong Kong, research which is centred on educational support and services with respect to inclusive education is still lacking while there is, therefore, a research gap that the perspective of teachers is also missing. The perspective of teachers is the focus of this research because they are the front line service providers and key change agents. The objective of this study is to investigate teachers' perceptions of the inclusion of ethnic minority students within the education system and how this may be better achieved via educational support and services. The study concludes that most of the participants hold a broad definition of inclusive education and are positive about the inclusion of ethnic minority students. However, based on their experiences, they hold a negative view of the chance of successful implementation of the inclusive education policy of ethnic minority students in Hong Kong. They believe that there should be more appropriate teacher training on curriculum differentiation and classroom management for inclusive classes, promotion of small class teaching in mainstream schools, school-based home school partnership policy and support groups, more experience-sharing among the teachers of different schools, better collaboration with local communities and, most importantly, improved consultation with and greater engagement of teachers.

Introduction

In Hong Kong, there is no multicultural education policy, at least partly because "the term multiculturalism is not often used in Hong Kong because Hong Kong is a predominantly Chinese community" (Mallozzi & Malloy, 2007:432). This is quite similar to Singapore, which is a multicultural nation, but in which "multicultural education is not a phrase used. Instead, multiculturalism is realized through the bilingual education policy" (Bokhorst-Heng, 2007:638). When educational issues concerning ethnic minorities are discussed in Hong Kong, the concept of inclusive education is generally applied (Heung, 2006). Even so, inclusive education of ethnic minorities has been afforded little emphasis in local educational policy and research, nor been a topic of significant discussion among education professionals in Hong Kong.

Studies of the educational concerns of ethnic minorities in Hong Kong have been undertaken in recent years, addressing issues such as language barriers and education needs (Yuen, 2007), emotional and behavioral issues for ethnic minority students (Heung, 2006), education of South Asian ethnic minority groups (Ku et al., 2005), inequality faced by ethnic minority students in the educational system (Aubourg, 2005; Loper, 2004; Unison Hong Kong, 2002), and *school life adaptation of school-age ethnic minorities* (Unison Hong Kong, 2001; YMMSS, 2000). Previous studies focussed on revealing the challenges faced by minority ethnic groups at different stages of the education system in Hong Kong in the areas of access to educational opportunities, educational provisions and curriculum design. All of these are interrelated and inter-affected but the challenges faced by teachers in providing education for ethnic minority students were rarely discussed before. The perspective of teachers is the focus of this study because they are the front line service providers and key change agents.

Ethnic Minority Students in Hong Kong Education System

According to the 'Thematic Report — Ethnic Minorities' published by the Census and Statistics Department in December 2002, the term ethnic minority applies to people of non-Chinese ethnicity in Hong Kong. 'Ethnic minorities' is the term used by government departments and non-government organizations (NGOs) in Hong Kong (e.g. C&SD, 2002, 2007, 2009; HKSARG, 2000, 2001, 2008; YMMSS, 2000, 2002). Ethnic minorities may include Caucasians who are English-speaking (C&SD, 2002) but are more often used to refer to South Asians (Ku et al., 2005; Loper, 2004; Sung, 2005; YMMSS, 2000, 2002). "As far as EMB¹ is concerned, children of ethnic minorities generally refer to South Asian children who are residing in Hong Kong" (Legislative Council Secretariat, 2007:1). Ethnic minority students are thus the students of non-Chinese ethnicity.

On the other hand, as interpreted by the Education Bureau (EDB), non-Chinese speaking (NCS) students are also referred to as ethnic minority students in Hong Kong. NCS students are students whose mother tongue is not Chinese and do not possess the necessary level of Chinese for everyday communication. In this study, the terms ethnic minority students and NCS students are interchangeable. As shown in Table 1, among the population undertaking full time study in primary, secondary and tertiary education in Hong Kong, there were 1,245,809 (97.75%) Chinese students and 28,722 (2.25%) ethnic minority students. These were South Asians (including Filipinos, Indonesians, Nepalese, Vietnamese, Thais, Pakistanis, Bangladeshis, Sri-Lankans, Indians), other Asians (Korean and Japanese), Westerners (British, Americans, Canadians), mixed and others.

Table 1: Hong Kong Resident Population Studying Full Time in HK by Ethnicity in 2006

Ethnicity	2006	
	Number	% of total
Chinese	1,245,809	97.75
Filipino	2,194	0.17
Indonesian	211	0.02
Japanese	2,542	0.20
Nepalese	2,344	0.18
Thai	357	0.03
Indian	3,329	0.26
Pakistani, Bangladeshi and Sri-Lankan	3,434	0.27
Vietnamese	312	0.02
Korean	1,033	0.08
Other Asian	291	0.02
White	5,079	0.40
Black	72	0.01
Mixed	7,343	0.58
Others	181	0.01
Total	1,274,531	100.00
<i>Source: 2006 Population By-census Office, Census and Statistics Department, Last review date: 22 February, 2007</i>		

Placement Arrangement : In Hong Kong, the educational system can be categorized into four types of school: designated school, mainstream school, designated class in mainstream school and others.

Designated School : Schools which have enrolled significant numbers of NCS children are invited to join the growing number of designated schools, which are provided with focused support for learning and teaching, especially with respect to Chinese language studies. There are now over 20 of such schools, with the majority in the primary sector. The number is expected to increase in the near future (EDB, 2008).

Mainstream School : The Government has introduced an Initiation Programme, which is available to newly-arrived NCS students. This is full-time of six-months' duration, and provides appropriate and timely support educational and community integration. For those using the Government's placement service for direct entry into mainstream schools, a 60-hour Induction Programme is provided through commissioned non-governmental organizations (NGOs) via an additional grant through School-based Support Scheme (SBSS) programmes (EDB, 2008).

Designated Class : Those NCS students taking advantage of the above provisions are said to be attending 'designated class'. The Initiation Programme thus provides a form

of classroom experience that aims to increase students' competency in both Chinese and English language, as well as helping with adjustment issues and fostering personal development. After completion of the programme, the students are assisted with placement into a mainstream school.

Others : The SBSS Grant scheme mentioned above can be accessed by all public sector schools to support the admission and assistance to eligible NCS students. A variety of access pathways is available, so that parents of NCS children can either approach a school directly, or work through a Regional Education Office or the Placement and Support Section of the EDB. Again, the SBSS grants are used for language and learning purposes, principally through the provision of Chinese or English language tutorials.

The government's supportive mechanisms have been designed for the ethnic minority students as a group, the South Asians, without consideration of inter-ethnic differences, their diverse culture and needs. Statistics (HKSARG, 2000, 2001; C&SD, 2002) have shown that there are basic differences in age structure, education attainment, occupation, income, and language competence among the minority groups. The EDB seems to identify language as the single major barrier to their achievement. This suggests that their supportive mechanisms may be limited in scope. In order to formulate plans that can better cater for them, studies on the educational needs and barriers to achievement of separate ethnic groups are required.

Inclusion of Ethnic Minority Students in Hong Kong

As mentioned at the introduction of this paper, previous studies focussed on revealing the challenges faced by minority ethnic groups at different stages of the education system in Hong Kong in the areas of access to educational opportunities, educational provisions and curriculum design. All of these are interrelated and inter-affected. The challenges faced by ethnic minority students, identified by the above and other studies, will now be discussed.

Public Acceptance and Perception : Two recent surveys have examined the degree of public acceptance of ethnic minorities in Hong Kong. The first was reported by Chan and Wong (2005), who surveyed 512 Hong Kong residents. A major finding was that over 60 per cent believed that ethnic minorities are negatively perceived by Hong Kong people. Notwithstanding this, about 80 per cent of respondents agreed that equal educational opportunities should be provided for ethnic minorities. For respondents with children in schools with ethnic minority students, though, around a quarter disagreed with the statement. Given this, it seems apparent that there is a level of discriminatory attitude exhibited by the Hong Kong population with respect to the education of ethnic minority students. That is, while supporting equal opportunity principles, they are unsupportive of integrating ethnic minority students with their own children in school. This attitude of parents clearly has the potential to undermine

efforts towards the integration of ethnic minority students through educational opportunities (Chan & Wong, 2005).

Continuing this finding, it was found that those with a higher level of attainment in education were more aware of negative perceptions and the serious nature of the racial discrimination displayed by Hong Kong people towards ethnic minorities. Furthermore, they also tended to have more positive perceptions of ethnic minorities in general. With respect to age-related findings, older persons tended to be less aware of negative attitudes and racial discrimination, and held more positive attitudes towards ethnic minorities, though they were less supportive of affirmative action. Statistically significant positive correlations were also found between the perceptions of Hong Kong people with respect to attitude and acquaintance with ethnic minorities. That is, those who have more interaction with ethnic minorities have more positive perceptions of them, and vice versa (Chan & Wong, 2005).

In 2008, the Census and Statistics Department conducted an extensive survey of 10,000 households (a response rate of 75 per cent) in Hong Kong concerning racial acceptance. Randomly selected participants were interviewed about their level of acceptance of ethnic groups under a range of roles (such as service providers, parents, neighbours and employers). The interviews also sought to find the levels of awareness of existing channels for the promotion of racial acceptance and current efforts on the eradication of racial discrimination. Essentially, as over 95 per cent of interviewees were Chinese, the report provided evidence of the attitudes of Hong Kong's Chinese population towards racial acceptance (C&SD, 2009).

As parents, over 80 per cent of interviewees aged 15 and over considered it 'very acceptable / quite acceptable' to send their children to a prestigious school where most students were Chinese, Caucasian or Japanese / Korean. When the proviso was for a prestigious school with most students from other ethnic groups², the responses rating it 'very acceptable / quite acceptable' ranged from 55.5 per cent to 66.8 per cent. Awareness of the means of promotion of racial acceptance, along with efforts to eradicate racial discrimination was mixed, with over half (52.8%) of the Chinese interviewees aware of the use of radio and television. The percentage dropped significantly for other channels of communication, with awareness of the role of newspapers and magazines at just over a quarter (26.4%), "services, including hotline and complaint handling by Government departments" (19.4%), the role of schools and teachers (12.6%), the use of leaflets and pamphlets (11.4%) and "advertisements in MTR / buses" (10.8%) (C&SD, 2009).

Language Policy : "Exclusion from educational opportunities is one of the main factors leading to poverty among ethnic minorities. Exclusion results from many causes. For example, students who do not have sufficient command of the local language to perform well academically may find that their poor academic performance limits their chances of advanced education" (Oxfam, 2004). In the U.S., "the educational task of

becoming American is viewed as a matter of becoming English speaking" (Olsen, 1997:91). Hong Kong is facing a similar situation, relating to the speaking of Chinese/Cantonese. According to Chan and Wong (2005), there are four major difficulties that ethnic minorities face in their daily life, these being language (contributing 23.8%); communication/integration with majority (21.7%); living habit (11.9%) and others (10.9%) (Chan & Wong, 2005). This concurs with the findings of another Hong Kong survey (Aubourg, 2005) which reported that the majority (over 80 per cent) of ethnic minority parents believed that language barriers precluded them sending their children to Chinese schools. As Chinese was not taught as a second language, this made integration too difficult and reduced career prospects.

English was the medium of instruction until 1997, when the Education Department introduced the requirement to use Chinese as the Medium of Instruction (CMI) in the majority of secondary schools. The purpose of this change was to arrest the decline in the standard of Chinese. The outcome of this mother tongue teaching policy is that only 114 secondary schools are permitted to use English as the Medium of Instruction (EMI). Ethnic minority students who do not read and write Chinese thus have fewer choices of school (Aubourg, 2005).

Another outcome of this policy is that many ethnic minority children are forced to attend International Schools, which for many are prohibitively expensive. Some of such schools (e.g. English Schools Foundation) are subsidized by the Hong Kong Government, but fees still reach up to around HK\$78,000 (US\$10,000) per year. Many ethnic minority children speak Cantonese fluently, but are often unable to write Chinese, thus rendering them unable to sit public examinations. A marginalizing effect results, with not enough places in the public school system for ethnic minority students (Aubourg, 2005).

Another effect, reported by Loper (2004) is that significant numbers of ethnic minority students end up in the lowest band (Band 3) schools that offer language classes in their first language, such as Hindi or Urdu. Examples include the Sir Ellis Kadoorie Secondary School, with a student population dominated by Indian (38 per cent) and Pakistani (41 per cent) students. Loper (2004) also reports claims by the S.S. Guru Gobind Singh Ji Educational Trust that nearly all (90 per cent) of Punjabi (Indian) students attend such schools in Hong Kong.

Aubourg (2005) reports that language differences and consequent difficulties are at least partly responsible for seemingly lower standards within schools catering for ethnic minority students, with poor public examination results, communication difficulties between teachers and parents, coupled with a lack of professional development for teachers with respect to multicultural classrooms. None of this is surprising, given the key contribution of language in society and educational success. Discussion of educational integration is often in tandem with consideration of language education, so that consideration of the education of ethnic minorities tending to focus on language

learning (Yuen, 2007).

Integration Education Policy : The above-mentioned School-based Support Scheme (SBSS) has been available since 2000, and provides support services that match those given to new arrivals from mainland China. The block grants of HK\$2,750 per primary student and HK\$4,080 per secondary student are the product of Government policy targeted at integration education. This is also a focus of the earlier-mentioned Induction and Initiation Programmes to support the educational integration of NCS children who have never studied in Hong Kong (Sung, 2005).

The implementation of policy has had some seemingly negative outcomes, with Ku et al. (2005) reporting that over half of the ethnic minority students believing that their educational opportunities are less than those of local Hong Kong students. As the system changed, ethnic minority students no longer enjoyed first round placement in the allocation to NCS schools. Further, under EDB direction concerning integration education, seven NCS directly subsidized primary schools cancelled classes for ethnic minority students. Disappointed parents looked for alternatives, such as considering home study, sending their children to private primary schools or making application again in the following year. The impression gained by some groups was that the choice of schooling had been limited, rather than expanded or improved (Sung, 2005).

Segregation of Communities : The apparent segregation of communities has led to the expression of significant concerns.

"The central allocation system assigns ethnic minority candidates who do not speak Chinese exclusively to the schools traditionally accepting ethnic minority pupils, thus creating a dual system of separate communities. Clearly, there are few opportunities for Chinese children to come into contact with ethnic minorities as peers, and vice versa. Many of the ethnic minority youth in Hong Kong have few Chinese friends. This lack of interaction may worsen prejudices. The rejection of and discrimination against ethnic minority youth may seriously make vulnerable their formation of identity and affect their later growth" (Aubourg, 2005:14).

In Yuen's (2007) study on the barriers to achievement of Nepalese students in Hong Kong, she concludes that Nepalese students who study with local children seem to be better integrated, although they seem to prefer their own ethnic groups and there are reports of discrimination. In some schools, she finds that Nepalese students as well as students from other ethnic origins are semi-segregated by having an English stream specially created for them. In schools that cater mainly for ethnic minorities, they are segregated from the local pupils. The segregated arrangements may affect their integration into society in the long term, and constrain their opportunity to use Chinese (Yuen, 2007).

Concluding Remarks : There are a number of limitations with respect to existing literature concerning the education of ethnic minorities in Hong Kong. First, the issue is under-researched. Second, there have been significant changes during the last few years, and some findings identified in earlier studies may no longer be relevant, and need to be brought up-to-date. For example, students' access to schools (Loper, 2004) may have improved since the formal opening of the new system.

Third, the focus of most local research has been on students in secondary schools (e.g. YMMSS, 2002; Loper, 2004; Unison Hong Kong, 2001). Many ethnic minority students begin their education in primary school, and little investigation has been done at this level.

The government's supportive mechanisms have been designed for the ethnic minority students as a group, the South Asians, without consideration of inter-ethnic differences, their diverse culture and needs. Statistics (HKSARG, 2000, 2001; C&SD, 2002) have shown that there are basic differences in age structure, education attainment, occupation, income, and language competence among the minority groups. In order to formulate plans that can better cater for them, studies on the educational needs and barriers to achievement of separate ethnic groups are required.

Fifth, although people generally supported that equal educational opportunities should be provided for ethnic minorities, they are not supportive of integrating ethnic minority students with their own children in school (Chan and Wong, 2005). This discriminatory attitude of parents has the potential to undermine efforts of inclusive education of ethnic minority students through educational opportunities.

Sixth, according to international literature, ethnic minority students encounter various barriers in their school achievement, but in Hong Kong, the EDB seems to identify language as the single major barrier to their achievement. This suggests that their supportive mechanisms may be limited in scope. Finally, very few local researches such as Yuen's study (2007) has studied the schools' strategies to support these students from the teachers' perspectives.

Research Methodology

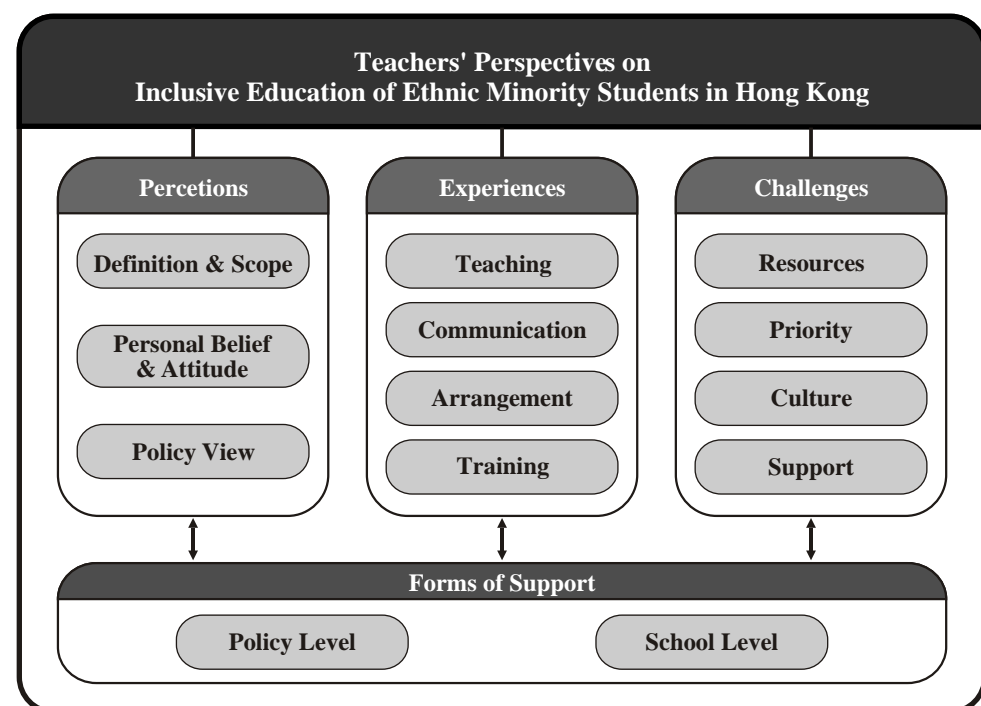
This study employed Grounded Theory method and was a qualitative study, analyzing the data collected from 20 in-depth individual interviews with teachers who had experience with ethnic minority students in Hong Kong. These teachers were from various types of schools: designated and non-designated, primary and secondary. Three quarters of them were teaching in mainstream schools, and one quarter teaching in designated schools. Over half (65%) were teaching in primary schools, with the remaining 35 per cent in secondary schools. A quarter of the teachers had experienced inclusive education training organized by the EDB.

The research study focused on creating conceptual frameworks through applying inductive analysis to the data. The collected interview data were coded into 'text units', comprising at most a few sentences, expressing a particular view. The transcripts were further content-analyzed. This analysis of comments and views led to the development of an analytical framework. This framework, made up of categories and sub-categories, was thus directly derived from the interview data. It underwent several iterations of modification and revision to ensure that it reflected an accurate and comprehensive coverage of the expressed views.

Achieved Analytical Framework : Challenges Facing the Teachers

After coding the collected interview data, an analytical framework of teachers' perspectives on inclusive education of ethnic minority students in Hong Kong consisting of themes, categories, and sub-categories was achieved. The framework was revised and the categories were re-arranged several times in order to reflect a comprehensive coverage of all the various views expressed during the interviews with teachers. As shown in Chart 1 below, the framework consists of four main themes: Perceptions, Experiences, Challenges and recommended Forms of Support. Depending on the depth and breadth of details provided by respondents, the themes were further broken down to the category and sub-category levels.

Chart 1: Framework of Teachers' Perspectives on Inclusive Education of Ethnic Minorities in Hong Kong

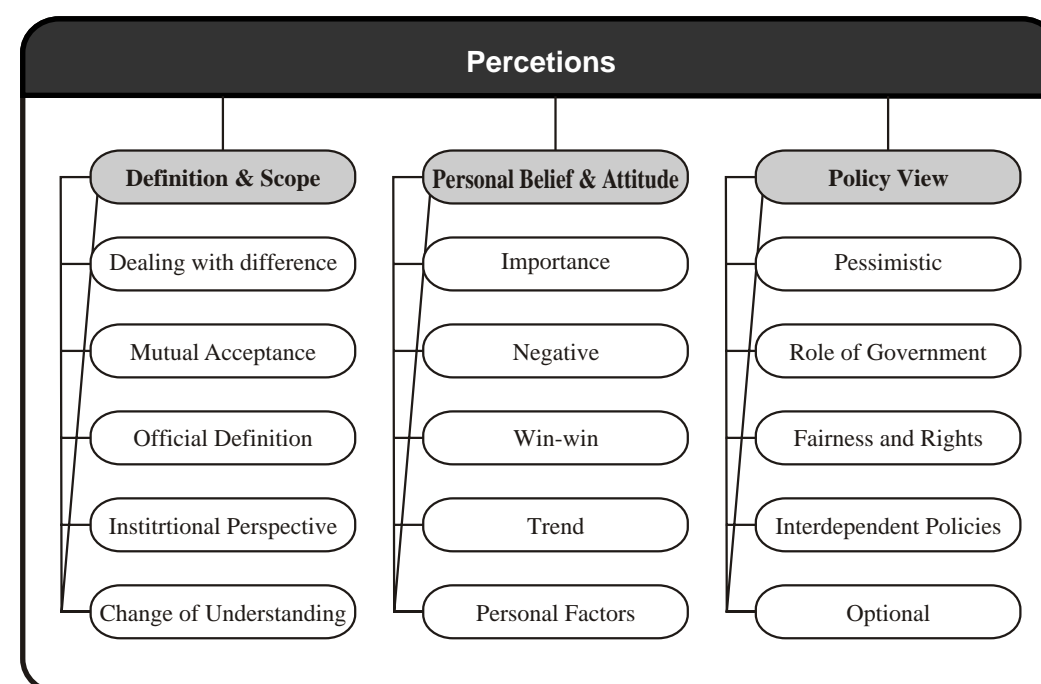


Essentially, the logic of the framework is that teachers in Hong Kong have a range of perspectives of inclusive education, based on their individual perceptions, which are in turn shaped by their experiences. These perceptions and experiences allow them to identify a number of challenges facing inclusive education in general and the teaching of ethnic minority students in particular. Given this level of understanding of inclusive education, teachers find themselves in a position to make what they believe are informed recommendations with respect to the forms of support that are needed to improve the education of ethnic minorities in Hong Kong. Furthermore, it is a two-way process, as indicated by the double-headed arrows in the framework chart. This means, for example, that teacher perceptions influence recommended forms of support and, conversely, existing forms of support can affect teacher perceptions. Similarly, the accumulation of experience introduces the participants to fresh challenges, just as challenges themselves add to the teachers' experience.

Perception

The theme of Perception was shown to consist of three categories: Definition & Scope, Personal Belief & Attitude, and Policy View. For each category, three sub-categories were identified, as shown in Chart 2: dealing with difference, mutual acceptance, official definition, institutional perspective and change of understanding.

Chart 2: Perception Theme



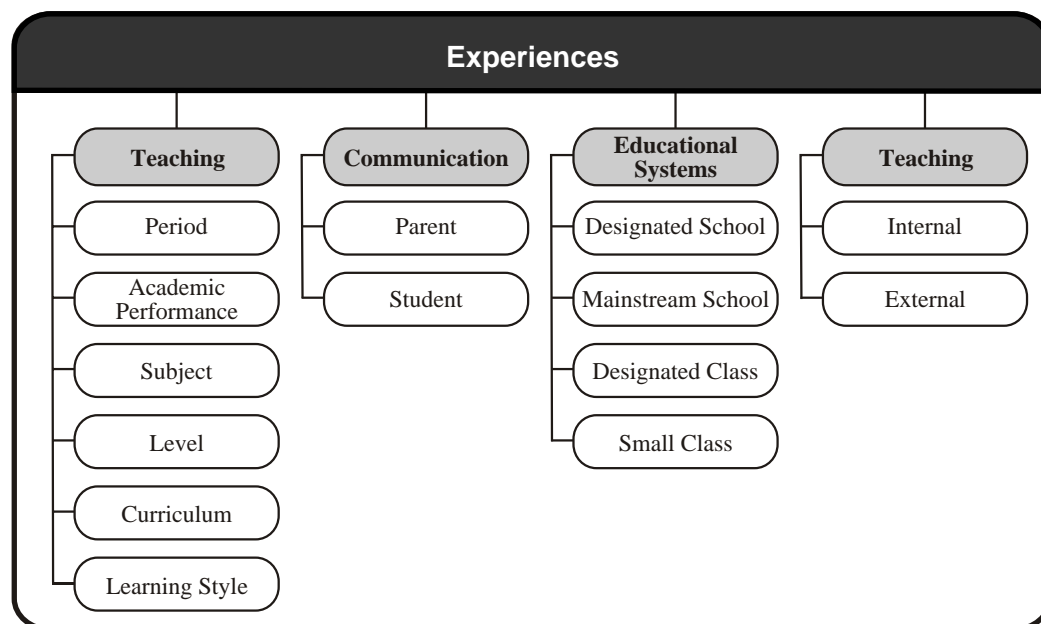
The perceptions of teachers towards the inclusive education of ethnic minority students in Hong Kong are dynamic, rather than static. Most of the participants held a broad definition of inclusive education and thought that inclusive education policies should include ethnic minority students. However, most of them held a negative view on the chance of successful implementation of the inclusive education policy of ethnic minority students in Hong Kong. The following concerns were expressed by teachers during the interview process: the practical realities of inclusive education; unsuccessful experiences in mainstream schools; and funding and resources (some teachers did not trust schools to spend money devolved to them for the intended purpose).

Most of participants did not agree that the policy of inclusive education of ethnic minority students was highly supported and strongly promoted by the Government or EDB. Nevertheless, most participants showed positive attitudes and beliefs toward the inclusive education of ethnic minority students in Hong Kong.

Experiences

The theme of Experiences was divided into four categories: Teaching, Communication, Arrangement, and Training. For each category, a number of sub-categories were further determined, as shown in Chart 3.

Chart 3: Experiences Theme



The experiences of teachers with the inclusive education of ethnic minority students in Hong Kong are also dynamic. Somewhat at odds with the evidence of previous research in other contexts, participants with longer teaching experience are

more supportive of inclusive education policy.

However, they found it difficult to improve the underachievement in academic performance of ethnic minority students because the current curriculum did not address the needs of these students from disadvantaged backgrounds and did not focus sufficiently on raising achievement. Nearly all participants shared a concern for maintaining existing academic standards for all students. However, given the tight timetable and curriculum syllabus, very few attempted to tailor the curriculum to the diverse needs of the students and, of those who did, their strategy was to reduce the quantity of curriculum materials.

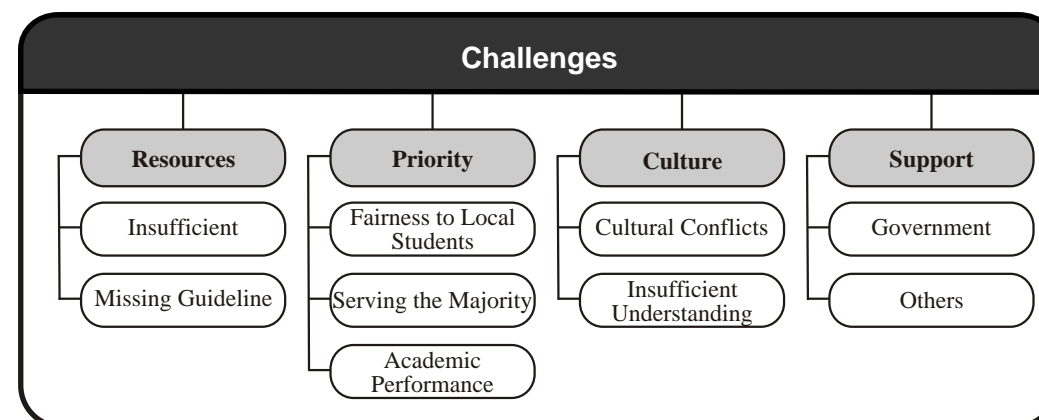
Some participants thought the students created the learning barriers themselves. Other participants focused on their parents, believing that they did not support their children in learning Chinese and hence such students could not follow the daily lessons in mainstream schools. Moreover, the local teachers and students do not understand the learning styles of ethnic minority students and thus the teaching and learning experiences of ethnic minority students are negatively affected.

According to the participants, to balance the trade-off between achieving high academic performance and successful inclusive education, the preferred option is a designated class or small class teaching in mainstream schools, as their experience of such arrangements was positive. Moreover, the participants indicated that without in-service and pre-service teacher education on curriculum differentiation and the delivery of the curriculum to all students, they would have found it very difficult to teach the inclusive class with ethnic minority students at the beginning.

Challenges

The theme of Challenges was deemed to consist of four categories: Resources, Priority, Culture, and Support. Under each category, further sub-categories were identified, as shown in Chart 4.

Chart 4: Challenges Theme



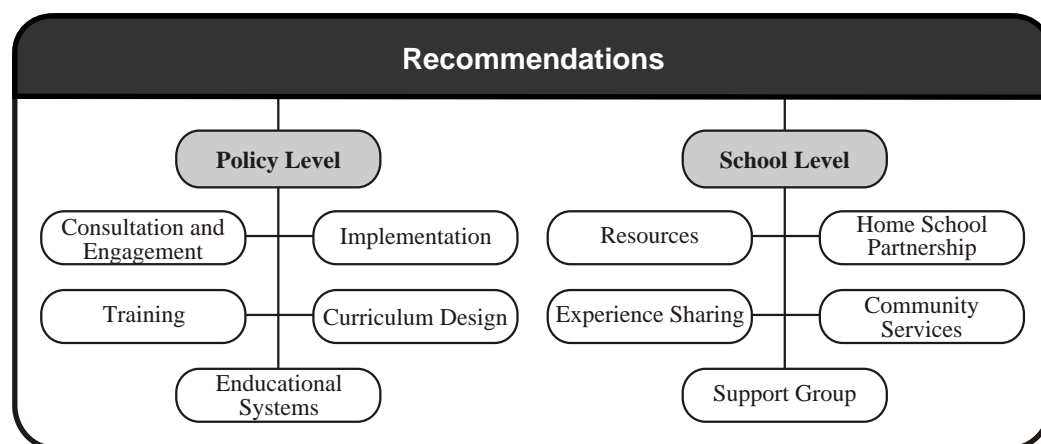
The challenges faced by the teachers relating to the inclusive education of ethnic minority students in Hong Kong are quite similar for all those teaching in mainstream schools, irrespective of the school setting arrangements. They believed that their schools could not enjoy government funding via the School-based Support Scheme, even though the resources were insufficient in their schools. As for the participants teaching in designated schools, they thought the guidelines for using the funding were insufficiently clear.

Some participants expressed that there was an inherent dilemma between the government and school expectation of inclusive education and academic performance. Moreover, different values on academic performance and school discipline among the schools and students and parents comprised the main cultural conflicts expressed by the participants. Insufficient understanding about the cultures of ethnic minorities negatively affected the teaching experiences of teachers and learning experiences of students.

Recommended Forms of Support

The theme of Forms of Support was found to consist of two categories: Policy Level and School Level. For each category, further sub-categories were identified, as shown in Chart 5.

Chart 5: Recommendations Theme



The forms of support perceived as needed by teachers to support the inclusion of ethnic minority students within the education system are grouped at policy and school levels.

At policy level, to provide proper forms of support, consultation and teacher engagement in policy formulation and planning implementation details are crucial, because teachers are the key change agents. This recognition of the central role of

teachers was a prime motivator for the explorations in this study.

In addition, initial teacher education is crucially important in familiarizing new entrants to the profession with the nature of inclusive education, and in providing them with relevant skills for teaching ethnic minority students in mainstream schools. Limited access to appropriate training has often resulted in the perpetuation of negative perceptions towards ethnic minority students. Newly qualified teachers require at least a basic understanding of inclusive education of ethnic minority students. This lays the foundations for good practice on which later generations can build and provides a critical mass of young teachers who have understanding and experiences of inclusive practice with ethnic minority students. Teacher education on general principles of curriculum differentiation and delivery should aim to help teachers identify the essential features of curriculum items in order to facilitate the learning of these features into manageable steps for inclusive classes.

It is also important to reach principals in mainstream schools, since their active leadership and support are essential to the achievement of change along inclusive lines. Although different arrangements in school settings have their advantages and disadvantages, small class teaching is the preferred arrangement to meet the learning needs of ethnic minority students and local students; to improve the quality of inclusive education; and to balance the trade-off between the expectation on academic performance and the implementation of inclusive education.

At school level, apart from funding to designated schools, mainstream schools should also be sponsored to increase additional resources for ethnic minority students. Such resources can be used to provide Chinese language tutorial services and employ teaching assistants who are also ethnic minorities but can speak Cantonese fluently and read and write Chinese. These assistants can help with communication among the schools, students and parents.

Local students can also be taken as a resource. Study groups and mentorship programmes should be introduced. Inclusive education is about all students, not just a few. It involves changing the culture of the school to ensure access and participation for all students currently in the school and also for others who are now in segregated provision but who may be joining the school in the future.

Moreover, home school partnership should be promoted. It is sometimes claimed that attempts to bring parents and teachers together will not work for the poorest families, those who have literacy difficulties themselves or those whose first language is not Cantonese/Chinese. During the interviews, participants usually blamed the parents failing to ensure that children do their homework and do not roam the streets. Due to different composition of the family backgrounds of students, every school needs its own home school partnership policy and includes concrete proposals for achieving better working relationship with parents.

"No school is an island and no school can succeed without developing networks of partnerships with its local community, with parents, past, present and future and with other schools and other agencies." (Mittler, 2000:178) Apart from parents, effective partnerships among teachers within the same school can be introduced in the form of support groups, while teachers from other schools can share their experiences, and the expertise of local communities should not be neglected.

Conclusion

The findings and conclusions presented in the analysis and discussions reveal that teachers, although generally positive about inclusive education, do not display a shared approach to inclusive education. This study also reveals that the evidence regarding the factors affecting the perceptions are inconsistent and none of them emerges as a single strong predictor of the perceptions of teachers. What can be reasonably concluded from the study is that increases in resources and support would impact positively on the perceptions of teachers.

Both pre- and in-service teacher training must also be priorities. It seems clear that teacher commitment and effectiveness will increase through the mastery of required teaching skills in the implementation of inclusive education. In similar vein, another conclusion is that although most teachers might initially resist an innovative policy, as skills and experience in implementing the policy are developed, they eventually become more supportive because of their success.

Fundamentally, inclusive education implies that all teachers are responsible for the education of all kinds of students. In this task, the teachers are entitled to expect and to receive appropriate preparation in initial teacher education and continuing professional development throughout their careers. They also deserve support from their schools, principals and the Government, as well as from the external support services to the school. This should be clearly expressed in the school development plan and the inclusion education policy for ethnic minority students.

Notes

1. Education and Manpower Bureau (EMB) was re-organised as Education Bureau (EDB) in 2007.
2. Including Indonesian / Malaysian / Filipino; Thai / Vietnamese / Cambodian; African; Indian / Pakistani / Bangladeshi / Nepalese and Arabian.

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Law & Justice : The Challenge for Civics

Robert J. Morris*

天下為公

The world is for the people / for justice.¹

Abstract

In current discourse about citizenship, citizenship education, and governance, it is usual to identify the "rule of law" as a necessary, and usually the sufficient, component of good citizenship and good governance. The rule of law, we say, is defined as the law above everyone and everything else. No one — no individual, no party, no organization — stands above the law. This definition is made to contrast with rule by law — the use of law by a higher authority to control, govern, and often oppress; to grant rights than to protect a priori (i.e., inherent) rights. There is a seeming certainty in the comfortable symmetry of these formulas. I challenge these notions because I believe that the rule of law is a limited and pedestrian concept that gets pressed into service in ways far beyond its capacity to explain or endure when we weigh it down with moral, ethical, and philosophical freight. To argue that rule of law means that the law is above all begs the question of those situations where the law itself puts someone or something else above the law itself, as when a constitution is made to be "the supreme law." The rule of law is not tantamount to justice. The false dichotomy between rule of law and rule by law simplistically ignores the fact that even in rule of law societies, there is necessarily rule by law, and often there is grave injustice. The rule of law often serves procedural and superficial ends rather than substantive justice, often serving the rich and powerful. The by/of dichotomy cannot provide much in the way of analysis regarding justice. Justice is usually handled as a subject in the "philosophy of law" or jurisprudence, i.e., a "subject" to be studied in a class, which is a mistake but is perhaps a default position because of the difficulty of finding a universal definition of justice or a way of examining it. The real question is how to teach and practice justice in daily life. The felt absence of justice can account for the disproportionate emotion released in public protests and rallies. Perhaps the ultimate measure of practical justice is the laboratory of mass demonstrations in the streets. Examples in Hong Kong suggest that this is so.

Keywords: Civics, dialectic, education, equality, jurisprudence, justice, moral, "one country, two systems," remonstrance, rule by law, rule of law, 2047

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The Tensions between Law and Justice

When I was a young law student in the United States, there was a poster showing a cartoon drawing of a thug clutching a knife dripping with blood. He looked remarkably like the young Marlon Brando in *On the Waterfront* and *The Wild One*. He was standing over the lifeless body of the victim he has just stabbed to death. At the bottom of the poster was the logo of the United States Department of Justice and the caption (intended to be humorous):

"JUSTICE: NOT JUST A CONCEPT BUT THE NAME OF A DEPARTMENT!" Another joke defines "justice" as "(1) a judge raised to a higher power; (2) mirage" (Morris 1989, p. 27). A year later, when I was a young lawyer newly in practice, I had a conversation with a young Chicano lawyer who had been in practice a few years. I offhandedly mentioned something about "justice," to which he laughed: "Justice!" You're lucky if you can get a hearing!" Like the justice poster and the definition, his retort, half serious and half in jest, marked an important truth: law (the hearing) is easy; justice is hard — so hard, in fact, and often so elusive that we can only pin it down in a joke — in telling what is the *absence* or *opposite* of justice.

Law and justice do not always go together; the one is not tantamount to the other. Law is sometimes the implement of injustice, and justice can sometimes be achieved, it is argued, by breaking the law, by vigilante justice, by "taking the law into your own hands," and in such appalling phrases as "extrajudicial killing." For example, the Nazi war criminal, Adolf Eichmann, was kidnapped and abducted by the Israeli secret Institute for Intelligence and Special Operations operating illegally in Argentina so that he could then be "brought to justice" before a court in Israel (Harel 1997). Another example, about the same era, is this dialogue in the 1983 film version of Stephen King's story, *The Dead Zone*. Johnny Smith has developed psychic powers to see the future, and he asks his doctor, Sam Weizak, a refugee from wartime Germany, "If you could go back in time to Germany, before Hitler came to power, knowing what you know now, would you kill him?" Dr. Weizak tries to avoid the question.

Johnny Smith : What about my question?

Dr. Sam Weizak : Huh? Huh? Oh, you mean the one about Hitler?

Johnny Smith : What would you do?

Dr. Sam Weizak : I don't like this, John. What are you getting at?

Johnny Smith : What would you do? Would you kill him?

Dr. Sam Weizak : All right. All right. I'll give you an answer. *I'm a man of medicine. I'm expected to save lives and ease suffering. I love people. Therefore, I would have no choice but to kill the son of a bitch.*

Johnny Smith : You'd never get away alive.

Dr. Sam Weizak : *It doesn't matter. I would kill him.* (Boam 1983, emphases added)

Both the tension and the symbiosis between law and justice have been argued in literature, religion, and philosophy (my own approach favors literature). The problem has typically been framed as the "age-old struggle to define the relation of law and justice and to determine to which the *judge* owes loyalty." (Herz 1996, pp. 112-13; emphasis added; Pound 1913; Chayes 1988) The judge here is a synecdoche for the legal profession, the government, the law school, and the various other elements that comprise the whole "rigging of the law" (Bolt 1995, p. 93). For this discussion, I minimize all of these. Instead, "citizenship education" here means the education of *ordinary citizens* exclusive of the legal profession, and it means what they learn in their hearts more than their intellects, and what they learn in the streets and on the job as well as in a classroom. The need for teachers and their students to acquire "legal literacy" is important (Schimmel and Militello 2007), but I argue also for a separate "literacy of justice" and a "pedagogy of justice," as this requires a different set of pedagogical and cognitive skills (Papastephanou 2008). As Banks and Banks (1995, p. 152) have it, "Helping students become reflective and active citizens of a democratic society is at the essence of our conception of equity pedagogy."

In October 2010, the Nobel Peace Prize was awarded to Liu Xiaobo (劉曉波), a Chinese dissident and veteran of Tiananmen, now serving an 11-year prison sentence in the PRC for "inciting subversion" with activities such as Charter 08 (Béja, Fu, and Pils 2012). The Beijing government sent a diplomatic objection to the government of Norway, stating that Liu was "a criminal who has been sentenced by Chinese judicial departments for violating Chinese law." (Huang 2010) This purported to be a statement about law. On the other hand, Western governments and human-rights campaigners worldwide welcomed the news of the Prize and urged Beijing to release Liu immediately, or at least to allow him to travel to Oslo. This was a reaction that appealed to justice. To the authorities who argued from the position of law, adherence to the law *was* the expression of justice. To the others, it was the opposite of justice.

In many cases, when we have an argument over the presence or absence of the rule of law, we are in fact talking about something much different—the presence or absence of justice. And the argument often as not is made on all sides by parties who are ignorant of both the law and of justice. Hence, the confusion and sometimes the conflation. All human societies have law. Some have written, positive law. Others have tribal law, customary law, traditional law, religious law, oral law. Many have a mixture of these. But there is no society without law. That is how all societies are able to define those members who are outlaws—traitors, violators, apostates, renegades, criminals, infidels—*Others* (Ardrey 1966, pp. 179-83). It can therefore be argued that all societies have justice—the local justice of the tribe. But in modern popular culture,

and particularly today in global culture, we often see law and justice sternly at odds because, in part, we aspire to approximate a global and uniform—and *objective*—definition of justice. We often say summarily that while law is everywhere—the world is awash in it—justice can hardly be found. This is, of course, a problem of politics and policy, law, history, and sociology. But it is also a problem of definition, and therefore a problem in education—in *knowing*. Indeed, the educational problem is *a priori*. The Hawaiian story of Kalapana captures it nicely:

Inā he 'ike hou aku kekahi, e pono ke ali'i e hele ilaila, no ka mea, aia nō ka pono o kēia hana 'o ka pau mai o nā 'ike a pau, o pā auane'i i ka hoa ho'opāpā.

If you want some new knowledge, it is right for you the chief to go there [to the place of knowledge], because the correct procedure of this work lies in exhausting all the different knowledges, lest you perhaps be defeated by your companion in the contest of wits. (Charlot 2005, pp. 247-73)

We know that Germany under Hitler changed its laws to make the Holocaust legal. Over forty years ago, the *Saturday Evening Post* (1967) editorialized this way regarding Nazi Germany (emphasis added):

We live, in this final third of the 20th century, with the knowledge that a modern industrial nation, advanced in the arts and sciences and philosophy, a Christian nation, used its resources and its considerable technology to murder six million human beings. *We do not know why or how this could be. And until we do, no man sleeps safe.*

That "not knowing" is precisely the problem. In Hong Kong, we are enthralled with the saga of a young woman who slaps police officers each time when she is repeatedly arrested yet gets off with a light sentence from the magistrate each time because, many believe, she is related to an important appellate judge. Legislators unite to urge China to free the imprisoned father whose "crime" was to organize parents of afflicted children against the melamine-tainted milk scandal (Fung and Chong 2010), and Beijing refuses, answering a plea for justice with justification in law. (Choi and Chong 2010). Most people who follow international news have seen the demonstrations in Hong Kong surrounding the "brainwashing洗腦" of the new Moral and National Education curriculum 「德育及國民教育科」 (Yu 2012) set for the public schools—a subject that many people in Hong Kong do not, despite its title, perceive to be a proper part of "citizenship education."² Each case in this handful of examples is representative of situations where there is rule of law and argument about law, but where it is perceived to be disjunctive with justice, and where most people, because they lack sufficient citizenship education in law, would have difficulty articulating what the problem and its solution are. And in each of them, as the *Post* editorial said, there is a lurking element of something that we "do not know." It is that knowing—or lack of it—that is the pedagogical problem. As playwright Robert Bolt

(1995) has Sir Thomas More put it in *A Man for All Seasons*, "this country is planted thick with laws from coast to coast" (Bolt 1995, pp. 41-42), and yet society for all that is not even "half good" (Bolt 1995, p. 88). We have a "common law" but not a "common justice." This stands in rather stark contrast to the argument of Professors Albert Chen (Chen Hong-yi) (1999; 1999/2000) and Chen Duanhong (1995; 1997) that the *law itself* changes the very psychology (心理)—the mental identity or mind-set—of the people, not vice versa. If the law is good, it should lead society to be good. Barack Obama, in accepting the 2009 Nobel Peace Prize, said it this way: "... [W]e are not mere prisoners of fate. Our actions matter, and can bend history in the direction of justice." (Obama 2009). This, I think, is what Professor Sunstein (1996) and others mean by the "expressive function of the law"—how the law empirically affects and *effects* behavior positively or negatively.

Thus, the world does not agree on the fundamental principles of justice (Kanwar and Singh 2010, p. xi). These disagreements are often played out on the international stage, and it is for this reason that we have made some attempts to create international laws, treaties, United Nations covenants, and so on, to try to define some kind of universal and objective standard of justice. It has proved to be a devilishly difficult task, if only because there is no way to enforce a universal justice. So long as communities are united in language or religion, for example, it is easier to have a local consensus on what justice is, but that may not be true even within a common culture (Morris 2005d). We may agree with Karl Mannheim (1954) and his school that all knowledges have a largely social origin and a social use. A global sense of justice may be a pipe dream. It often seems to be in the eye of the beholder—like pornography, it is "hard to define, but I know it when I see it."³ Or perhaps the other way around is truer—I know injustice when I see it. In any case, justice is often more seen, felt, and exemplified than taught. The absence of injustice feels like a personal affront. The ineffable nature of justice (正義) is illustrated by this definition in the *Hong Kong English-Chinese Legal Dictionary* (Chan 2005, p. 1059; first and last lines emphases added):

根據探究者的某特定哲學學派所界定的思想概念，並以《柏拉圖對話》中的《克拉梯樓斯》篇作出證明。大部份的定義可分為兩大類型：其中一種說法是正義屬超自然的性質，並由上帝作決定；另一種說法是維持正義的根據人類判斷所作出的成規事項。

A concept defined according to the particular philosophical school of the inquirer, as evidenced by the Platonic dialogue, *Cratylus*. Most definitions can be categorized into one of two groups: one holding that justice has a transcendental nature and is determined by God; the other maintaining that justice is a matter of convention determined by human judgment.

I can guarantee that most of my law students had never read Plato's *Cratylus*, and most do not recur to God for their legal thinking. That leaves "a matter of convention

determined by human judgment." In this I cannot find objective academic standards that would facilitate a pedagogical approach to teaching justice—no desired "learning outcomes," no definable "marking guidelines," no testable hypotheses or bullet-points. How do you teach something we only say we have a "sense" of? One of the most fundamental axioms of the common law is that not only must justice be done, but it must be seen to be done.⁴ This is why common law judges must always be at pains to explain the decisions of their courts—to give their *ratio decidendi*—the reason for the decision. Justice is not done by *ipse dixit*. From this follows another axiom that like cases must be treated alike.⁵ Impartial justice means that parties in similar circumstances are treated by law as similar. This is what upset so many residents of Hong Kong in the "cop slapper" case involving the niece of the judge. Vocal protesters took to the streets to make the obvious point that if any one of *them* (i.e., *us*), who are not related to high judges, slapped a police officer, they (i.e., *we*) would go to jail. This is also why a commentary on the case in a popular magazine is so problematic. Entitled "Mob Rule or Rule of Law", the article (Vines 2010) began with this paragraph (emphasis added):

Something very, very bad has happened in Hong Kong although the reasons for its happening are quite understandable. In recent weeks we have seen citizens taking to the streets and calling up radio stations lambasting a lenient sentence for the high profile defendant...who is niece of a High Court judge. *This is deeply troubling because any society that allows jail sentences to be determined on the streets and over the airwaves is in deep trouble.*

The article criticizes the "opportunism" of the "least principled political party," the Liberal Party, for street demonstrations, and calls such activity "demagoguery." "Does anyone really want legal disputes moved onto the streets in the style of the Cultural Revolution..." Similar arguments have been raised both for and against mass street demonstrations over "national education." (Chan 2012; Yeung 2012; Chong, Lee, Ng, Wan, and Lau 2012), calling them "anarchy." In my view, we are in "deep trouble," but it is not because of street demonstrators and activist political parties. It is, rather, the misunderstanding that names as the Cultural Revolution the vindication of the fundamental "right to demonstrate." (Paul Harris 2007) The law is usually confined to the indoors; justice often moves into the laboratory of the streets, where the public square becomes the space in which the people push back and speak truth to power in the exercise of participatory democracy. The felt absence of justice can account for the disproportionate and spontaneous emotion released in such public protests and rallies regardless of the immediate problem that triggers them, which may appear innocuous. As chapter 15 of the Confucian text *The Canon of Filial Piety* 《孝經》 has it: When faced with injustice, the son must necessarily (cannot *not*) remonstrate with his father, the subject with his sovereign 「當不義，則子不可以不爭於父，臣不可以不爭於君。」

I view the arguments about "demagoguery" and "anarchy" as misguided and as the representative expressions of a less than ideal education in citizenship. First of all, the concomitant freedoms of speech, press, publication, association, assembly, procession, and demonstration in the streets of Hong Kong are rights guaranteed to all, at least for the moment, by Article 27 of the Hong Kong *Basic Law*—and they are fragile (Morris 2005b). Those who exercise these rights lawfully are not a "mob." The forced choice between "mob rule" and "rule of law" is a false binary. Second, such exercise is not the proper juxtaposition to the "rule of law." Confucius taught: "What you do not wish for yourself, do not do to others." 「己所不欲，勿施於人」 (*Analects* 《論語》 15.24) The problem for justice is when the "others" felt they are not thus treated, when they are put upon or used, pressured to claim as truth what they do not in fact believe, or discriminated against by any many of inequality. (Loh and Civic Exchange 2006) This ignites a powder keg. Rage turns to *outrage*. Most citizens are probably not by nature demonstrative, but when they perceive that justice does not *seem* to have been done, whether by the courts, the police, or any other machinery of government, it is not "demagoguery" or "anarchy" for them to oppose the perceived perpetrator of the injustice, as well as the injustice itself. "We would not seek a battle as we are," Shakespeare has Henry tell Montjoy, "Nor, as we are, we say we will not shun it." (*Henry V*, Act 3, Scene 6) Paul Harris (2007), a Hong Kong barrister, has admirably explicated the importance of doing so in his book, *The Right To Demonstrate*. This right, he argues, is where all the other rights that comprise "freedom of expression" coalesce (Morris 2007a). This is, I argue, where justice is learned (Tiananmen versus Tahrir)—not as a "subject" in a book.

It is clear that law by itself—in the form of due process, judicial review, law enforcement—is not necessarily just. As Peter d'Errico (2006) has noted, the "law is terror put into words." Equity attempts to mitigate some of this terror, as do principles that bank and cool the criminal law (Li 2010), but these are not coextensive with justice. We cannot assume because a citizen has received "all the process that is due,"⁶ that s/he has received a truly just due process of law. "In hell," Grant Gilmore (1979) remarked, "there will be nothing but due process." As Bolt (1995, p. 93) has Cromwell say: "What Englishman can behold without Awe / The Canvas and the Rigging of the Law!" the *double entendre* of "rigging" coming just before Cromwell's sham court sentences Thomas More to be beheaded. In chapter 8 of Book 1 of *The Wealth of Nations*, Adam Smith (1776) observed:

Is this improvement in the circumstances of the lower ranks of the people to be regarded as an advantage or as an inconveniency to the society? The answer seems at first sight abundantly plain. Servants, labourers, and workmen of different kinds, make up the far greater part of every great political society. But what improves the circumstances of the greater part can never be regarded as an inconveniency to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It

is but equity, besides, that they who feed, clothe, and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed, and lodged.

This is a modern vision of the ancient 大同—the great common weal that constitutes a truly just commonwealth—justice is "but equity." We may find an expanded working out of such ideas in James Madison, the principal architect of the American Constitution's *Bill of Rights*, who wrote in *Federalist Paper* No. 51 (Kramnick 1987, p. 322; emphases added):

Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit. In a society under the forms of which the *stronger faction can readily unite and oppress the weaker*, anarchy may as truly be said to reign as in a state of nature, where the weaker individual is not secured against the violence of the stronger; and as, in the latter state, even the stronger individuals are prompted, by the uncertainty of their condition, to submit to a government which may protect the weak as well as themselves; so, in the former state, will the more powerful factions or parties be gradually induced, by a like motive, *to wish for a government which will protect all parties, the weaker as well as the more powerful.*

Education in Civics

It follows from all this that teaching justice is a necessary component of citizenship education—not only for its content but for the pedagogy of the discipline. Because education in Civics for literacy in justice is at bottom an *educational problem*, (Morris 2010b), it has important implications that flow to the subjects of governance, political science, and law. I am a Jeffersonian in that I believe that only an enlightened citizenry, meaning an educated citizenry, can truly participate in what Thomas Jefferson called "the blessings of liberty." I am also Jeffersonian enough to know that even though you declare some "truths" to be "self-evident," they will nevertheless be forever contested, and that therefore they must be spelled out and the case for them must be forever made and remade (Morgan 2002; Stewart 2007; Dunn 2006). That contestation is often political, social, religious, and cultural, but it is surely always legal. Hence, I argue that being civilly "educated" today includes knowing the law. Whatever else may be included in the Civics curriculum, some substantial quantum of legal education is for everyone—*everyone*—in society (Morris 2004, 2005c, 2007b, 2010b). It is necessary to study and know the law in order to transcend the rule of/by law into justice. And it is necessary to include what, for lack of a better word, I would call *uneducation*—the need to *unlearn* the false information, urban legends, and intentional misdirections about law and citizenship that circulate everywhere in the general population. It follows that to teach rule of law (or even just plain law) without the component of justice is to

shortchange the very idea of citizenship itself.⁷ Yet as Brookes and Holford (2009) have observed of citizenship education generally, and as I have observed with regard specifically to law (Morris 2005c), the "educational sphere" often ignores, and is ignored by, other "spheres" and disciplines within the academy. The spheres tend to become hermetically sealed off from each other by disciplinary constraints, mutually exclusive jargon, and departmental turf jealousies. Justice surely is interdisciplinary, as the subject of Civics must be. As Sunzi put it in his treatise on military methods: Different kinds of terrain are interconnected. 地形有通者。 (《孫子兵法》11. 24)

If citizenship education is the subject, it is probably well to define education, or rather what it means to *be educated*. Better still, what does it mean to be *uneducated*. I think two characteristics describe an educated person: First, someone on whom nothing is lost, and second, someone who cannot be fooled. These qualifications, like us, are of course never perfect. But uneducated people are those who constantly miss the point (the real issue, as we say in the law), and who regularly get fooled, duped, overborne, swayed, bamboozled, herded, tantalized, stampeded, snookered, and misled (Mackay 1999). Teaching justice is more difficult than teaching law, just as teaching algebra is more difficult than teaching arithmetic. How is it done? You can look up the law in a book or read it online. We call it "black letter law." You can see it there in the statutes and case reports, just as you can see a + sign or a $\sqrt{\quad}$ symbol. You cannot do so with justice. Justice, like infinity ∞ , can only be approximated. With justice you are solving for x . There is always a gap between the concept and the application. While we speak of someone as having a "sense of justice," we never speak of having a "sense of law." Philosophers like John Rawls write books such as *A Theory of Justice* (1972), and others like Amartya Sen (2009) debate academically with him. Their texts and arguments are taught in courses called Jurisprudence or Legal Theory where a handful of students and professors debate them further (Rehn 2010). But justice for citizenship education, for the people, 為公, does not live in these spaces.

Legal theorists and empiricists who study social justice *among the people* seldom interact across disciplines (Galligan 2010, p. 983). There is little or no high-impact "knowledge exchange" or "knowledge transfer." I do not believe that justice can be wholly taught as a subject. However cogent such arguments may be, political and legal philosophies do not engage the masses. Justice must be seen and lived to be believed. Law is not the only instrumentality of justice (Tai 2010). We need to have some sort of yardstick. In this day of pedagogical metronomics such as "outcome-based education" and "criteria-referenced assessment" (Morris 2010a), how would we measure the success of such an education in Civics? How could we tell that it was setting our feet on the path of justice and good governance? What would be the objective standards and benchmarks? What exam could we mark and grade? How would our students demonstrate knowledge of it? How much would be enough? Is the laboratory of the streets the final measure? The pedagogical challenge is to teach how to *act* about justice—how to *be* just. These questions are not hermetic—they have affected Civics

education, including knowledge of the law, and ultimately justice. How can we test outcome-based education and criteria-referenced assessment in Civics? How can we tell if we are cultivating politically mature citizens who do not merely replicate a submissive attitude toward paternalistic and authoritarian government—to "do what they are told"? (Lo 2001; Scott 2001; Fairbrother 2005)

A Hong Kong Civics Quiz : 2047

I offer a gentle test that may be diagnostic of these issues. It is the same test I gave every year at the University of Hong Kong law school to the incoming class in my Hong Kong Legal System & Legal Methods (LLAW 6160) class. It is a quiz with only one question, and the students had five minutes to answer that question... I note that these were all adult learners—most of them middle-aged, many with families, possessing undergraduate (and some postgraduate) degrees, some published authors, all gainfully employed citizens of Hong Kong with more than the average level and quality of education and experience. Many were in government service. But they were not matriculated law students. They came to the law school as part of the ADR Program—Alternative Dispute Resolution—to learn to become arbitrators and mediators in their unions, professions, and offices. It is a noble service they aspired to. They thus represented a reasonable cross-section of our Hong Kong citizenry. Here is the quiz:

Describe the government, polity, political and legal system of Hong Kong as it will actually exist on the morning of July 1, 2047. You have five minutes.

In a civics-educated citizenry as I have defined it, everyone should be able to engage this question immediately, easily, deeply, and briefly—having already thought about it privately and discussed it in the public square for years. And yet it was usual for the class that almost no one wrote or spoke. All stared their desks or each other or at me as if I had handed them a text engraved in Old Martian. Almost to a person, they did not know what the question was about. They had never considered the significance of this most crucial of dates—July 1, 2047. Yet it affects every possible aspect of their personal and professional lives. As an *entrée* to the discussion that was to ensue, I asked how many of them owned real property such as a flat, or work in an office tower, shop in a mall, and use public and private facilities. Almost all raised their hands. I asked the property owners if they had ever read the contract documents that comprised the deed to their property, which is in part a land lease. Usually no hands went up. The Hong Kong *Basic Law* problematizes this date in this context with this language in Article 121 (emphasis added): "As regards all leases of land granted or renewed where the original leases contain no right of renewal, during the period from 27 May 1985 to 30 June 1997, which extend beyond 30 June 1997 and expire not later than 30 June 2047..." Do all citizens know what this means for their own property? Does anybody know what it means? Is this language mandatory, hortatory, or merely descriptive? Here is the relevant clause from the property description of my own flat regarding the

Government Lease:

(c) Term of years : commencing on the 31st day of March 1995 and expiring on the 30th day of June 2047

The government of Hong Kong owns all the land under all the buildings in Hong Kong, save one (Morris 2008a), and at midnight on June 30, 2047, the right and title to all that land reverts to the landlord *causing the ground leases to end*. So who will our landlord be on the morning after the night before: July 1, 2047? But why that date? What is it that fixes that particular date and effects that draconian change? It has the air of something implacable and intractable. One might think this question and its obvious answer would be uppermost in the minds of all who are concerned with citizenship, education, governance, law, politics, business, and especially justice, or at least those who live in flats, own shipyards, work in factories or offices, and attend schools—yet it is hardly discussed anywhere in Hong Kong. And yet if whatever happens on July 1, 2047, deprives me of my property or my livelihood or of my rights even *with* just compensation or due process of law, then the law will have ruled, but justice will have failed.

The pedigree of this crucial date is easy to trace—and here follows a whole string of allusions. It was the brainchild of Deng Xiaoping (鄧小平), the founder and promulgator of the Hong Kong *Basic Law*, which he called his "masterpiece." The *Basic Law* is a "socialist document" (Ghai 1997) that instantiates Deng's "One Country, Two Systems" (OCTA) theorem, which is his formulation of the classic Marxist-Leninist doctrine of "historical and dialectical materialism" 辯証唯物主義, 歷史唯物主義 (Morris 2007c, 2008b). The Preamble of the *Basic Law* states (emphases added) this clearly in the desiderata of "upholding national unity and territorial integrity, maintaining the prosperity and stability of Hong Kong, and taking account of its *history and realities*, the *People's Republic of China has decided...*" This is the dialectic in operation, and the *Basic Law* sets it up to operate for 50 years. "Who decides," Deng Xiaoping asked a Party conference, "which of the classic international principles of communism are applicable to China?" We do, he answered. (Deng 1982-1992, vol. 1, pp. 239-40). "Materialism" means "the actual situation in Hong Kong" (*Basic Law*, Article 45), as that situation evolves and mutates—and as it is defined and reified though the dialectic. The dialectical mechanism of the *Basic Law* and OCTS establishes substantial legal and political "connecting doors" between Hong Kong and Beijing (Lison Harris, Ma, and Fung in Fu et al. 2005). Justice interrogates these matters by asking whether they constitute—whether they even *can* constitute—a polity where 天下為公. Can this mesh with "historical and dialectical materialism" (Morris 2007c)?

And the *Basic Law*, which commenced operation on July 1, 1997, and which creates the present legal, political, and social system of Hong Kong, by its own terms

bears a "use-by" date of 50 years thence. Chapter 1, Article 5, states: "The socialist system and policies shall not be practised in the Hong Kong Special Administrative Region, and the previous capitalist system and way of life *shall remain unchanged for 50 years*." So what happens at the commencement of the fifty-first year—July 1, 2047, when the guarantee expires? How can the "rule of law," instantiated in, and granted by fiat in, a "socialist document," prohibit the practice of the "socialist system"? How can the *Basic Law* promise that the "socialist system" will not be practiced when it instantiates the socialist dialectic of "one country, two systems" as its very system? Do these tensions constitute justice? Without the knowledge of these things, and without principled answers to these kinds of Civics questions, it is impossible, I argue, to talk intelligently about, much less interrogate the deep meaning of, the *Basic Law* and Hong Kong's future or consider what it means for the "prosperity and stability (繁榮和穩定) of Hong Kong."⁸ This is why I think that most discussions in Hong Kong about "universal suffrage," democracy, functional constituencies, the "election" of the chief executive, and similar themes these days are incredibly naive. It is ironic when pro-democracy advocates, in speaking of freedom of the press or of expression, for example, say they are "defending One Country Two Systems," as if OCTS was a *guarantee* of their rights and freedoms. It is not. It is only a temporary and limited grant until midnight, June 30, 2047. OCTS is designed to *end* our rights and freedoms. If we cannot answer the dialectical question about 2047, what possibly can be the significance of interim and ephemeral dates like 2012, 2017, 2020 for the supposed advent of "universal suffrage" or anything else? In sum, the *law* of July 1, 2047, is perfectly clear: The fiat will end. The *justice* surrounding it, if any, is far from clear.

Summary & Conclusion: Who Decides?

These are questions for a good course in citizenship education and governance. There are other examples like these. Citizens who remain willfully or negligently ignorant of such questions cannot, by definition, be participants in good citizenship or good governance—they are doomed to remain unempowered. Civics invites us all to the modern vision of the ancient大同—We are all in this together. The 1962 film *Mutiny on the Bounty*, a story certainly about both law and justice, gives these consummate words to the court-martial judge in the trial of Captain Bligh (Lederer 1962, final emphasis added):

Your methods, so far as this court can discern, show what we shall cautiously term an excess of zeal. We cannot condemn zeal. We cannot rebuke an officer who has administered discipline according to the *Articles of War* but the *Articles* are fallible, as any articles are bound to be. No code can cover all contingencies. We cannot put justice aboard our ships in books. *Justice and decency are carried in the heart of the captain, or they be not aboard.*

The law is fallible; justice lies in the heart. If justice cannot be taught directly, if it be not in books but in the hearts of the captains (the people), it can be modeled and pointed to obliquely. Teachers and administrators can model it in *just schools and just classrooms* (Zipin and Reid 2008) with *just assessment criteria* (Sadler 2009). The community of scholars that we comprise—the educational system—must be a mechanism to find and create justice. As the ancient wisdom has it:

One discovers one's deficiencies through learning; one finds out one's difficulties through teaching. In recognizing deficiencies, one is able to reflect on oneself; in overcoming difficulties, one is able to develop oneself. Therefore, it is said that teaching and learning are mutually enhancing.

是故學然後知不足·教然後知困·知不足·然後能自反也知困·然後能自強也·故曰·教學相長也。’

Literature—fiction, poetry, song, and film (Wan 2010)—are good ways to think about justice. So is political action. I have alluded throughout this discussion to the play, *A Man for All Seasons*, for the proposition that despite all laws, the country may not be even "half good." On the other hand, we have seen the two Professors Chen argue that the law itself changes the psychology of the people, and can "bend history in the direction of justice." My own view is that the law and society are in a symbiosis—a dialectic—in the creation of justice. Each must be pushed to facilitate the other. Unless that happens, we may find ourselves in the political dystopia that Sunzi describes:

Anger may in time change to gladness, and vexation to content, but a state that has perished cannot be resurrected, nor can the dead be brought back to life. Therefore, the enlightened ruler is prudent, and the good general is warned against rash action.

怒可以復喜，慍可以復說，亡國不可以復存，死者不可以復生。故明主慎之，良將警之。（《孫子兵法》12.30）

It is difficult, if not impossible, to conceive of any real justice that is stamped from the beginning with an automatic sunset date. Civics education and the pursuit of justice recognize that words such as "moral" 德 may not mean the same things across languages and cultures—or even within the same culture. (Morris 2005d) The "correct procedure of this work lies in exhausting all the different knowledges" because in today's world, all "different kinds of terrain are interconnected." Contesting "who decides" is the essence of the struggle for justice. Yet "if we know it when we see it" (or feel it), then perhaps we may honestly say it is something like universal. We must practice justice in our teaching and learning so that we do not make the mistake of thinking that we have taught justice when all we have taught is the law.

Notes

1. The signature slogan of Dr. Sun Yat-sen (孫中山) attributed to Confucius (孔夫子) in the *Book of Rites* 《禮記》云：「大道之行也，天下為公」。 To travel the Great Way is this: The world is for everyone. Dr. Sun elucidated it in his seminal *Three Principles of the People* 《三民主義》 and popularized it in his calligraphy. It appears on the fresco of his memorial in Taiwan: <www.yatsen.gov.tw/chinese>. The word 公 bears the meanings of the public, the collective, the common good, the commonwealth, the common weal or common well, global, worldwide, and so on and hence, justice, just, fairness, fair, equitable, impartial, universal or vice versa (Que 2002, pp. 79-80).
2. For balance, views from the PRC mainland may be read in several articles in 《亞洲週刊》 [Asia Weekly] online at <www.yzzk.com/cfm/main.cfm>; seen September 10, 2010.
3. US Supreme Court Justice Potter Stewart, concurring in *Jacobellis v. Ohio*, 378 US 184, 197 (1964).
4. *Lee Chan Chung, Solicitors & Notaries v. Yung Mei Chun* [2010] HKCFI 196, para. 22.
5. *Fok Chun Wa v. The Hospital Authority and The Secretary for Food and Health* [2010] HKCA 136, paras. 74 et seq.
6. *Cleveland Board of Education v. Loudermill*, 470 US 532 (1985).
7. I use "rule of law" and "the rule of law" interchangeably here. Peerenboom (2002) attempts to distinguish the two in his discussion of China. Unfortunately, as an analytical concept, this distinction can only be made in English and other languages that have the definite article "the" or a cognate. Therefore, it cannot be made in Chinese. Morris (2005a).
8. Other elements in the *Basic Law* that have already proved to be destabilizing are Article 23 and Article 158, but these are beyond the scope of this study.
9. 《禮記·學記》 *Book of Rites*, "Studies," chapter 18, paragraph 3, which may be viewed online at <www.yasue.cc/hok_gei.html>. I am grateful to Professor David Lung Ping-yee of the HKU Department of Architecture for making me aware of this text.

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An Intervention on 'Democracy' as a Term in Empirical Political Analysis

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Abstract

Two separate sets of data derived from recent scholarship on the subject are examined to show that the term 'democracy' is problematically used in certain empirical political analyses. The first data set concerns thirty articles published by the journal Political Analysis between the years 2005 and 2010. The second data set is a body of 30 prominent monographs and edited volumes dealing substantively with 'democracy' from the years 2006 to 2011. Twenty-five out of thirty articles in the first data set do not explicitly define what is meant by the use of 'democracy' to the reader. Twenty-nine out of thirty works in the second data set provide subjective conceptualisations of 'democracy' to the reader which is parochial rather than post-foundationally universal. This work proposes that the practice of using a 'disclaimer' is a positive step to solving this problem. When a concept cannot be delivered in a universal framework, it makes a difference to err on the side of caution and make clear to the reader the subjective quality of a term like 'democracy'.

Key words: democracy, political analysis, empirical, conceptual clarity

Introduction

This paper is an intervention on the argument regarding conceptual clarity in the social sciences that Sartori (1970, p. 1033; 1984; and 1988 with Job) made some years ago. It is not a comprehensive response, as the focus herein will be on the use of 'democracy' as a concept in empirical studies — whereas Sartori was more concerned with comparative politics. This work's specific focus will be on the use of the term or concept 'democracy'¹ in the substantive area of empirical political analysis. This argument is important to make because of two factors: the first is that certain recent developments² in social and political theory have shown that our previous modes of thinking about 'democracy' are problematic. And the second is that numerous thinkers in empirical political analyses are not explicitly defining their subjective understandings of 'democracy' to the reader despite these recent changes. That compounds the problem at hand. This discussion ends with the argument that certain empiricists have moved beyond this problem by using 'disclaimers' regarding 'democracy'.

To try to meet part of Sartori's expectations, this paper will first clarify several

specific arguments and concepts. The first concerns 'democracy'. It is widely acknowledged that there are a multiplicity of understandings concerning this word as a term, form of government, or style of governance. And as will come to be seen, certain thinkers have been acknowledging this difficulty and circumventing this gap in the literature (the missing post-universally³ agreed upon definition of 'democracy') by going into greater specificity concerning the role of 'democracy' or how it is conceived in their study.

One point that would merit a discussion is how empiricists in political science have moved past what certain commentators have called 'the endless debate among political theorists' concerning the definition of democracy. Because a post-universal definition is not yet available, empiricists moved to using procedural conceptions heavily focused on the institutions of 'free and fair elections' or the subjectively defined parameters relating to democratic governance as defined for example in the International Covenant on Civil and Political Rights (particularly Articles 25, 26, and 27). But that in itself is a major critique from political theorists: free and fair elections or the Covenant's own definition do not equate with 'democracy'. There are also significant differences in how voting, campaigning and the broader election process can take place not to mention a plurality of understandings about those matters. The method of trying to move past 'theoretical squabbles' by avoiding the conceptual or terminological demands of democracy has not worked. As will come to be seen, the use of a 'disclaimer' appeases this situation and is a proven method for empiricists to use in their studies. This work argues that 'democracy' as a form of government *and* governance should be based on robust theoretical and empirical studies primarily employing a cosmopolitan methodology. If that is not possible, the default to a 'disclaimer' is effective.

As can be seen from Gagnon (2010) who analysed forty different types of 'democracy' using both theoretical and empirical methods, there might be a method to use that could allow scholars to understand what the 'democracy' from which all other democracies stem. Some call this 'true' or 'ecumenical' (Saward, 2003, 2003b; Fung, 2007; Elstub, 2010) democracy whilst Gagnon (2010) calls this 'basic' democracy. A noticeable shortcoming with Gagnon's work is that it does not sufficiently employ a cosmopolitan methodology⁴. To be more specific, the forty types of 'democracy' analysed by that author (and the literature associated with those types) are mainly, if not entirely, from European and North American thinkers. There is also a strong presence of male thinkers which should have been balanced by seeking out female authors to a greater extent. Because much democratic theory and practice from the 'South',⁵ 'East',⁶ third world and fourth world were not included, his work is parochial⁷ and only informs a theory of 'basic Western' and male-centric 'democracy'.

However, that being said, the possibility that these deficiencies were not present in his work can be entertained. If that were the case, the academy might have the ability to arrive at a less parochial (if not 'truly' universal) conception of democracy: one that

does not risk being manipulated by ersatz democrats such as the once German Democratic Republic or the elite politics in the People's Republic of China. Although the only and central aim of this paper is to show that identifying the subjectivity of democracy makes a significant difference in an empirical study, it would be good to not avoid the real possibility of becoming 'lost' in the Wittgensteinian word-game of democracy's conceptions: there must be some rigid definition of it that can accommodate different praxes over time. By re-deploying Gagnon's method in a manner that could conform to these cosmopolitan expectations, a definition of democracy so robust as to avoid having to enter the 'niggling grounds' of explaining what democracy 'means' in an empirical work could be achieved.

Clarifying 'Democracy'

Nevertheless, the aforementioned is beyond the scope of this work. Therefore the simple conceptualisation of 'democracy' to be used is that not enough is known about it. This recent conceptual frame from Dunn (see Dunn and Gagnon 2011) argues that there are many different conceptualisations of democracy which have enough similarity to fend off the ersatz whilst at the same time being uncertain.

It is necessary to justify how this uncertainty over democracy exists as Dunn's argument may come to some as a surprise. The cosmopolitan turn in social theory plays a central role here. So too, do the works of Isakhan and Stockwell (2011, 2011a, 2013), Keane (2009) and Seeley (2011) as well as a reading into the extant literature created by archaeologists and anthropologists who investigate early human or hominid societal organization (for example Diamond 1997, 2005, and Fukuyama 2011). A synthesis of these works reveals two important points: the first is that a number of works concerning 'democracy' are being done in time periods that greatly pre-date Classical Greece or the revolutionary periods of countries near the North Atlantic. Some also investigate societies with minimal or no contact with other peoples. The second is that there is a surprisingly robust set of arguments concerning non-human democratic practices in various animal societies like those of certain bees, ants, and gorillas. Should it be considered that 'democracy' might be a form of government and governance that the human species evolved with, then there might be a greater degree of legitimacy to the idea that 'democracy' is for all peoples and that all peoples at one stage or another had various types of democratic organization.

The aforementioned has created a crisis in the way we 'used to think' about democracy. It used to be foundational in numerous places and times (ancient Athens, Republican Rome, representation-era England for example). But that has now by necessity given way to uncertainty until we can reach a new and acceptable foundation that is 'truth' to global humanity. This does not exist today which is possibly why Dunn argues that the only definition for democracy is that we do not have one. We've but guesses glued together from the potsherds of history. Many giant gaps remain — our

vase is fragile.

To understand this point further, the 'false narrative of democracy' needs some attention. Isakhan (2011) explained this narrative in a clear and convincing manner. He argued that the normative understanding of 'democracy', which it appears is still prevalent in recent literature (see Dahl 1989, Qvortup 2004, Brown 2004, Fleck and Andrew 2006 and Woltermann 2011 for example), is that it is a form of government and governance invented by the Greek or typically the Athenians concerning their form of direct democracy. As the story goes, 'democracy' was then taken up by the Roman Republic which consequently lost it to empire and decline. It then came back from the dead after approximately a thousand years, a construct usually associated with the end of the 'dark ages', in the form of rediscovered Greek texts, the *Magna Charta* and the much later North Atlantic revolutions. The story then moves to arguing that 'democracy' had undergone a period of maturation in European and North American governments and that, in the 20th century, it was then ready for export to other countries and or peoples who were ignorant of 'democracy' as it was not invented in their histories. Other more accommodating readings of this narrative often include mention of Italian city-state republics and Swiss cantons,⁸ but it is difficult to deny that this narrative (however one reads it) is orientalist and smacks of 'Western'⁹ pomposity. It might also be clear to a variety of critical thinkers that this standard narrative is parochial and flawed because much of thinking that has gone into it was using parochial theoretical presumptions.

If the works of thinkers like Beck and Grande (2010, p. 409), Held (Held and Gagnon, 2011, p. 1-18), Fukuyama (2011), Weale (2007), Whitehead (2001), Isakhan and Stockwell (2011), Keane (2009), Watkins (2008), Cunningham (2000), Ober,¹⁰ Lo,¹¹ Dunn (Dunn and Gagnon, 2011) or Jahanbegloo (Jahanbegloo and Gagnon, 2011) were grouped together there is a point of delineation between what was presumed to be 'democracy' and what is now understood and doubted about 'democracy.'

This standard narrative does not logically fit with the new narrative and presumably will not fit with a global study of what 'democracy' might be. The standard narrative is problematic because it leaves out many diverse political histories and, without considering those histories, the standard understanding of 'democracy' is potentially flawed by a lack of knowledge. This new understanding of 'democracy' invalidates the standard understanding's claim as to knowing what 'democracy' is and how others should be going about it. However, if the standard understanding could be labelled a 'Western' understanding of 'democracy' it could legitimately continue to be recognised for the brilliant work that has happened over centuries in its regional group of thinking.¹² Because it is not appropriate for 'democracy' to be extrapolated globally it should also not be simply termed 'democracy' but something more specific as qualified by a subjective disclaimer.

A difficulty with this paper is that the argument does not go into great detail concerning how 'democracy' is used by authors in both datasets. To explain further, semantic analysis or other content analysis methodologies are not used herein. This was specifically avoided because it is not necessary to make this point. This paper is straddling a fine line: it is attempting to argue in a normative fashion that scholars are still using 'democracy' in their works in a problematic way, but that this can improve across the board through the simple 'disclaimer' method — at least until such a time as 'democracy' can be conceived of in a post-foundationalist (Eckersley, 2011) manner. It is hoped that this primarily logic-based argument will not prove Gordian and that it will serve, in whatever small way, to create greater clarity in the empirical studies of 'democracy' or those studies that involve 'democracy' as a variable.

Recalling the earlier mentioned arguments from Sartori, he made it very clear that it is the thinker's responsibility to provide conceptual clarity wherever possible which, in some anxiety, is something hopefully achieved throughout this article. Sartori argues that this removes unnecessary ambiguity or nebulosity from a work which is a boon to the reader and other researchers. As mentioned earlier, the by-pass empiricists have tried to make by focusing on quantifiable institutions solely targeting elections did not meet this demand.

The 'missing ingredient' in empirical arguments of democracy having no non-parochial universal definition leads to the necessity for authors to tell the reader what he or she means when using 'democracy' in his or her work. This, however, is not often done in the majority of recent empirical literature. There are at least two possible reasons for this is: the first is a widespread flaw in the theoretical understanding of 'democracy' as a concept or how it is better used as a term. The second is negligence or ignorance of the issue. Other studies would be useful to show which reason is most predominant or what other possibilities might be.

Justifications

It must be considered why works were selected from 2005-2011 and why, for that matter, from the journal *Political Analysis*. That temporal period was targeted to provide contemporary evidence showing that this 'democracy' problem in empirical analyses exists. Staying between those years has its drawbacks with the most noticeable being that many authors, especially in the second dataset (D2), have dealt with the definitional issues of 'democracy' in their earlier works. Taking this into account, the second dataset was assigned a comparative role: something that can be drawn from to help analyse the first data set which focuses on the way 'democracy' is used in contemporary empirical political analyses. However, as will come to be seen, the point still stands that despite earlier definitional work the authors of empirical analyses should still deploy the use of a disclaimer if the concept or term 'democracy' appears therein.

The first data-set, here to forth referred to as 'D1', (see Appendix A under Ancillary Material at the end of this paper) is a sample of thirty works from 2005-2010 published by the journal *Political Analysis*. Articles from this journal were chosen because this journal has a high impact factor and is well-regarded by academics internationally as a leader in high-quality empirical political analysis (e.g. Gary King). Despite the 'American' leanings the journal has, it does produce studies 'for the world' and it is in this journal that the solution to the problem lies. That fits the exact needs of this study. The thirty articles were chosen randomly by the fact that they had used 'democracy' in some way.

The goal of this study is to see how the authors of those papers approached the use of 'democracy' in their works. These papers are highly technical, often focusing on but one aspect of democratic processes and that they are ultimately not meant to dwell on the ontological basis of the concept and definitional aspects of 'democracy'. And this helps to explain that the argument in this paper is not one that is critical of why 'democracy' was not better explained in the thirty papers although widely known, this is because it is impractical to engage the definitional issues of 'democracy'. There is simply no space to do so in an empirical work tangentially using democracy as a variable for example. But by justifying the 'how' of 'democracy' in their work (the disclaimer) more robustly this removes the need to be bothered with the 'why': that is completely central and may very well 'do Sartori proud'. This disclaimer could give the impressive methodological arguments seen in twenty-five of those thirty papers greater clarity.

The second data-set, or 'D2', (see Appendix B at the end of this article) is a sample of monographs and edited collections from 2006-2011 that are to varying extents addressing 'democracy' published by academic presses. D2 is included in this study, as outlined above, because it demonstrates that a citation by the author of an empirical study is not enough as the conceptions of 'democracy' in *all* of D2 are subjective. Even with a citation, the author of an empirical study needs to place a disclaimer.

The authors of empirical studies often direct the reader to monographs written, for example, by Lijphart who uses a reason-based argument when discussing what he means by 'democracy' which is not compatible with any of the recent developments in the new understanding of democracy. This is due to the ontology used in his work. This criticism would not be valid if Lijphart used a cosmopolitan methodology (but that in many ways is an anachronism). It appears that the authors in these articles who refer to Lijphart or other thinkers may reason that these publications are authoritatively explaining what 'democracy' is. But this is not the case. Depending on the reference, the meaning of 'democracy' can change: indeed, a number of references are made to entire monographs without designating page numbers for the reader to gain a better sense of 'democracy' in the empiricist's study.

Because of the aforementioned it seems reasonable to argue that, despite providing a reference, particular care should still be taken to tell the reader what is meant (if ever so briefly for articles dealing only in passing with 'democracy') in order to situate the author's subjective meaning of 'democracy' within the extant literature. This may have the ability to remove a degree of ambiguity from the argument and may help the reader to understand the author's findings to a greater degree, especially if 'democracy' plays a central role in the work. This may also have the effect of reducing the number of studies extrapolating parochial findings on the globe as one 'democracy' may not necessarily be relevant to countries with different 'democracy'. However, the obverse may also be true. The authors of the articles in D1 may legitimately argue that their works are not parochial and may be relevant to different notions of 'democracy'. It is just that this is not in majority convincingly done. It is not seen how their works are capable of doing so because it is not seen how 'democracy' is subjectively situated in their arguments.

To finish with the justificatory arguments, it would be good to question the assumptions made in various quantitative empirical indices concerning 'democracy' as these are frequently used in empirical analyses. The block quote below explains the now out-dated but still cited Polity III index:

The Polity III dataset is a modified and updated version of the widely used Polity II dataset (ICPSR89). Polity III updates and, in some instances, alters the Polity II data (on the modifications see JPR95). Included in the Polity III time-series dataset are two indicators of regime type (Autocracy and Democracy) and eight indicators of political authority (Regulation of Executive Recruitment, Competitiveness of Executive Recruitment, Openness of Executive Recruitment, Monocratism, Constraints on Chief Executive, Regulation of Political Participation, Competitiveness of Political Participation, and Centralization of State Authority). (Jagers and Gurr, 1996)

Several questions¹³ initially come to mind after reading this quote. Why is there a considerable focus on the executive body, on participation, and centralization? Should there not also be consideration for the boundaries of citizenship, the nature of that citizenry's sovereignty, its understandings of equality, the way in which it challenges or influences law, the nature of communication, and the ways in which officials are selected? There seems to be confusion here between government type and type of governance which is another example of how it is problematic to conceptualise 'democracy' as it can be viewed as both a form of government and a form of governance. It is also a static concept that is complex and because of this authors should be weary of assuming that readers or even nearest colleagues would have the same understanding of it. Ultimately, authors should also be wary of what indices are measuring and terming 'democracy' as their dependent variables might not be relevant or may lose their relevance in countries that have different understandings of 'democracy' than do the theoretical underpinnings on which these indices rely. This argument can be made for

Freedom House, Polity IV, and the Economist's popular measurement of 'democracy' as these are the indices primarily investigated herein.

Problematic Uses of 'Democracy' in D1

D1 will be investigated in a manner that shows the difficulty of forming a globally consensual definition of 'democracy' rather than disparaging this body of literature for not having done so. Remarkably, and the reason this paper exists, is because empiricists have solved this problem (but that is to come further below). In order to understand the solution to the difficulties that 'democracy' is posing, a few examples of how works have addressed the issue poorly is pertinent.

Wilson and Butler's¹⁴ examination of Reich's (1999) and Poe and Tate's (1994) statistical robustness resulted in the mention of 'democracy'. It appears that neither Reich nor Poe and Tate indicated what they were exactly referring to when they themselves mentioned 'democracy'. Reich (1999, p. 737) stipulated that he depended on Polity III's index along with several other indices such as those generated by Freedom House,¹⁵ Bollen (1980, p. 370), and Vanhanen (2000). This diversification of indices, however, is a positive development as it reduces the author's dependence on one particular concept of 'democracy'. Bollen stated,

A researcher wishing to test...hypotheses faces a number of difficulties. One central problem is the controversy surrounding the measurement of political democracy. These measurement problems can drastically affect empirical results. (Bollen, 1980: 370)

Bollen argued that his method of indexing democracies was better than others used prior to his argument. But here under this critical light his work only helps to further establish the current paradigm of how 'democracy' is problematically measured in empirical political analysis, rather than settling the 'democracy' debate. It sometimes seems that institutions typically for elections and how they function have become synonymous with 'democracy' rather than parts of 'democracy'. This mode of thinking developed because scholars wanted to distinguish what is actual democracy (real existing democracies) from the claimants the ersatz in a climate of vague theory. As de Schweinitz¹⁶ observed:

Democracy is one of those troublesome words which means all things to all people. Like motherhood and patriotism, it is thought to be a noble condition and is evoked by politicians, publicists, preachers, and demagogues to prove their unsullied intentions and just claim to popular support. (Bollen, 1980, P. 371)

Bollen (1980, p. 372) described 'political democracy' as 'the extent to which the

political power of the elite is minimised and that of the non-elite is maximised,' meaning that his measurement could concentrate on trying to gauge the degree of sovereignty the citizenry have. But rather than focus intently in that direction (understandably the theoretical parameters to do so were not yet developed), he takes a different approach by bringing Dahl (1956), Downs (1957), Lenski (1976), and Lipset (1959) into the scenario and focused primarily on elections and liberties so as to populate indirect variables in order to measure the power of the non-elite. In this example we see that the shift from trying to settle the 'debate that surrounds the definition of democracy' became a focus on institutions whilst the subjective definitions of 'democracy' became acceptable to base empirical studies upon. This situation may be problematic because the results relate to the exact meaning the researcher has of 'democracy'. It is subjective and may be less legitimate when this is extrapolated in an attempt to fit over other perceptions and practices of 'democracy' — especially those that fit normative expectations or models of 'democracy' that can be rigorously argued to not be ersatz.

Here are some examples of uses where the disclaimer is not given: Grimmer (2010, p. 3) mentions deliberative democracy but gives no further details pertaining to that particular style. Is deliberative democracy the concept of 'democracy' agreed upon by Senators? Perhaps more importantly, where in the now massive literature on deliberative democracy is Grimmer situating his conception? Wilson and Butler (2007, p. 112), Jusko and Shively (2005, p. 339), Plümper and Troeger (2007, p. 126) and Ho et al (2007, p. 217) make mention of 'democracy' but do not define it, as do Krehbiel, Meirowitz and Romer (2005, p. 114) and Jackson and Sides (2006, p. 208) regarding representative democracy; Mustillo (2009, p. 317, 322) concerning transitions to 'democracy'; Sambanis and Michaelides (2009, p. 97-98) when discussing democratic counterfactuals; and Hood, Kidd and Morris (2008, p. 324) when describing the Granger test as being capable of answering questions such as the causal relationship between 'democracy' and economy. Whilst the Granger test's capacities are not doubted, the example used by the authors is less accurate by their use of 'democracy'. As 'democracy' was not explained by the authors their example could be less clear because the reader might be using his or her own subjective understanding of the term or concept in relation to the Granger test's result — that could possibly be contrary to Hood, Kidd and Morris' intentions for the reader.

Continuing, Kern and Hainmueller (2009, p. 379) argued that West German television familiarised East Germans with the freedoms and liberties and the functioning of 'democracy' which undermined the communist regime. The reader is here confronted with similar questions to those that arose in the brief look at democracy indices made earlier in this work. Which liberties and freedom? What exactly is the functioning of 'democracy'? The authors refer primarily to O'Donnell, Schmitter, and Whitehead (1986) but despite this work's many impressive merits it does not answer the question of what 'democracy' is. The work (O'Donnell, Schmitter and Whitehead 1986,

p. 6) seems to advocate that a liberal civil society based on Gramsci's 'historical bloc' argument is a key to 'democracy' (which it may be)¹⁷ but this was not given by Kern and Hainmueller.

Davidov's (2009) study based on the International Social Survey Program¹⁸ (ISSP) continues this trend. The survey asks respondents questions like: 'how proud are you of the way democracy works?' (Davidov 2009, p. 68). This question is problematic as every respondent has a different understanding of 'democracy'. The question could be modified to ask the respondent to answer firstly 'what is democracy' and then 'how proud of it are you?' In that manner a more precise understanding of 'democracy' could be gained. The quantitative results may be weaker in this case because the respondents were replying to different conceptualizations of 'democracy' since no disclaimer of that sort was made.

Laslier (2006) is another example of this difficulty. The author seems to suppose that the reader or other researcher that would like to reproduce his work will come to have the same 'point of view of democracy' as he does. As can be seen in the block quote below, should Laslier have avoided using the term 'democracy', and instead discussed the virtue of approval voting from a viewpoint of it being a process of a certain kind of democracy, he would have ducked this criticism.

The present article stresses the fact that approval voting is interesting from another point of view. Apart from the identity of who is finally elected, an election held under the approval voting rule provides a more accurate picture of the political space. This point in itself is valuable from the point of view of democracy. (Laslier 2006, p. 176)

Continuing, Clarke (2007, p. 358) described Huth and Allee's (2002) study of political accountability as having six variables, most of which interact with 'democracy'. However, Huth and Allee did not define what 'democracy' is which may potentially make both studies confusing. Sanders et al (2007) offer another example in this argument:

Democracy dissatisfaction: On the whole, are you satisfied or dissatisfied with the way that democracy works in this country? (Response options: very satisfied, fairly satisfied, a little dissatisfied, very dissatisfied, do not know, refused). (Sanders et al 2007, 282)

At this point, we can argue that the question above is inappropriate. How can 'democracy' be considered a dependent variable if it is not defined to the individual? As each respondent has a different understanding of 'democracy' the survey results may not be as robust as they could be. Hug (2010) discussed 'democracy' regarding the Polity IV Democracy scale as a variable but did not discuss what 'democracy' is or what Regan and Norton (2005) considered it to be. Kedar and Shively (2005: 297), in their

discussion of comparative politics, referred to 'democracy' as being a 'macro level' variable. However, 'democracy' can be argued to have no such agreed-upon macros. The fact that a variety of indices measuring 'democracy' (such as the Economist's Democracy Index, L. J. Diamond's great democracy indexing work, and other NGO and MNO score cards) does not override the argument that democratic theory has not yet established the macro parameters of a post-universal democratic variable. The use of 'democracy' in this sense is problematic and can cast doubt onto the relevancy of any political analysis concerning 'democracy' unless the variable is specifically defined to the reader.¹⁹

Continuing, Huber, Kernell and Leoni's (2005, p. 362, 382) argument about individual attachments to political parties relies on 'democracy' for the argument to function. In the case of this article, the authors cite Polity IV's ten point scale to ascertain which democracies would be involved in their study (as do Brambor, Clark, and Golder 2006, and Box-Steffensmeier, De Boef, and Joyce 2007). Systemic Peace (the creators of the Polity analyses) described the parameters of their study in the following way:

This perspective envisions a spectrum of governing authority that spans from *fully institutionalized autocracies* through *mixed, or incoherent, authority regimes* (termed 'anocracies') to *fully institutionalized democracies*. (www.systemicpeace.org/polity/polity4.htm, accessed January 14, 2012, 10:33 am)

The description made above has problems similar to those with other scales measuring 'democracy'. This argument is relevant to Arceneaux and Nickerson's (2009) reanalysis of Broz's large study of fiscal transparency and level of 'democracy' as the authors rely on the Polity III scale. Even if these projects had robust theoretical underpinnings the argument that they are parochial might still be made because this scale and its assumptions are not based on a cosmopolitan methodology. A future investigation into whether the theory behind Polity IV, or other scales, and whether such are compatible with recent developments in democratic theory seems called for. Continuing, King and Zeng (2006) refer to 'democracy' in their discussion of counterfactuals:

We now apply these methods of evaluating counterfactuals to address one of the most asked questions in political science: what is the effect of a democratic form of government (as compared to less democratic forms)? We study counterfactuals relating to the degree of democracy using data collected by the State Failure Task Force. (King and Zeng, 2006, p. 141)

The authors of the quote above rely on Esty et al's (1998) Phase II study of regime change. However, the Esty et al study does not define 'democracy' but rather defines one parameter of their study as 'liberal democracy' (Esty et al, 1998, p. 52). The

problem is that democratic institutions are culturally relevant entities that were created by various complex bodies and processes over time.²⁰ The literature has shown that an attempt to superimpose one type of democratic institution on a citizenry to which such is culturally alien is inappropriate. The 'democracy' which informs all other democracies (that post-universalist concept) is not defined by institutions. Institutions, it is argued, define the style of 'democracy'. Furthermore, measuring governments around the world using primarily a US-American liberal democracy²¹ model is not compatible with non-parochial expectations that are now rather prevalent in political theory.

Conceptualisations of 'Democracy' in D2

As earlier stipulated, this set of data has been assigned a comparative role. The intention is to investigate these works and to classify them based on how they have conceptualised 'democracy'. This is done to try and complete the argument made earlier in this work: specifically the aspect that empirical political analysts should not rely on citing one or more sources in the literature (even contemporary ones) to express what 'democracy' means but rather that this should be done to detail how the authors conceive 'democracy'. This argument goes further and stresses that depending on these works is an insufficient justification for extrapolating findings globally.

D2 will be analysed using Charmaz's (2006) grounded theory methodology and will classify the data into four sections: qualitative, quantitative, non-formal theory, and formal theory. The intention is to understand which technique thinkers in this body of data have used the most when conceptualizing 'democracy' and to simultaneously see if any of them happened to have used a method that may be termed a cosmopolitan methodology. It is hoped that this will make a small contribution to better understanding the way in which 'democracy' is conceptualised in contemporary work. The result of this study may be useful for a comparative analysis with literature between a different five year period (could 'democracy' have been conceptualised differently then and how?).

Figure 1 shows that nearly the entire majority of texts in D2 used non-formal theoretical methods when conceptualising 'democracy'. The one work which stood out was Diamond and Plattner's edited volume which drew on several different empirical analyses from contributors in an impressive attempt to understand how people in different regions understand 'democracy'. Although this work is admirable to a great extent, there is still the question of the theoretical underpinnings in each study the authors drew from. How did the researchers conceptualise 'democracy' and did this then impact the results? Another impressive feature of this work is that it almost had a cosmopolitan methodology about it as the work was gathering data from a diverse set of individuals across the globe. However, where it falls short of non-parochial expectations, is that it is used an understanding of 'democracy' rooted in the standard

narrative of 'democracy'.

Figure 1 Contemporary Methods for Conceptualising 'Democracy'

Qualitative	Quantitative	Non-Formal Theory	Formal Theory
0	1	29	0

Improved Uses of 'Democracy' in D1

Kedar (2005, p. 413) mentioned that one factor which may lead to voters' perceptions of policy is the voters' naïve understanding of 'democracy'. But scholars might be falling prey to the same naïveté with 'democracy' as in this example the author depends solely on Lijphart's (1999) understanding of 'democracy.' Lijphart (1999, p. 1) began by providing a definition of 'democracy' as 'government by the people'. He then provided definitions of representative democracy and then concisely provided the differentiation between majoritarian and consensus or negotiation styles of democracy (1999, p. 2). However, Lijphart's initial premise of 'democracy' as government by the people is too vague: it could mean any variety of things. Furthermore, Lijphart used the consensus and majoritarian styles of democracy as his theoretical base point which underlines his analysis. Kedar (2005, p. 418) showed how difficult this 'democracy' concept can be when stating 'Lijphart....famously offers a two-dimensional conceptual map of democracy...'. What Lijphart appears to have offered is a contrasting 10 point scale that can be used to measure a polity's tendencies towards either a consensus or majoritarian style of democracy and not 'democracy' itself.

But this is where matters turn around. The solution to the use of 'democracy' appears to have almost come by chance. For example, Monroe, Colaresi and Quinn (2008) recognised the limits to using 'democracy':

Contemporary representative democratic systems are shaped, perhaps defined, by the relationships among citizens, elected representatives, political parties, and the substance of politics. Creating tools to analyze these relationships, and how they interconnect dynamically over the life of a democracy, is a fundamental challenge to political methodology. (Monroe, Colaresi and Quinn 2008, p. 298)

Following Monroe, Colaresi and Quinn's mention of the 'fundamental challenge to political methodology', there are some other examples in the data. Lewis and Linzer (2005, p. 360) approach 'democracy' in their article through the nature of their argument. The authors recognised that 'democracy' is an estimated value due to the variety of indices, scales, and classifications that exist regarding the measuring of 'democracy'. They cite Cohen's (2004) democracy classification model as the definition of their dependent variable and base part of their critique off it. This is a strong example of authors carefully engaging 'democracy' in an empirical analysis.

Macdonald, Rabinowitz and Listhaug's (2007) work is another strong example for good use of democratic terminology. They refer specifically to a 'typical European multiparty democracy' (Macdonald, Rabinowitz and Listhaug 2007, p. 409) in the case of Norway, and then provide evidence concerning political competitiveness and fragmentation. The authors state a style of democracy and link that style to others of similar nature in Europe, which is a positive step forward as they have provided the reader with the context and contours of their conceptualisation of 'democracy'. Brandt and Freeman (2009) continue,

Although some variables in macropolitical processes clearly are exogenous, we believe that others are both a cause and a consequence of each other. For example, *our understanding of democracy* [emphasis added] implies that there is some popular accountability for economic policy and thus endogeneity between popular evaluations of the economy and macroeconomic outcomes (or policies). (Brandt and Freeman 2009, p. 114)

Here the authors do not explain what democracy is, but rather share that their understanding of it implies certain things. They succeed in not drawing in the reader's own notions of 'democracy' and they do not waste space on the tangent of explaining in detail concerning what they think 'democracy' is as this would be highly marginal to their central argument. McDonald and Best (2006) serve as a further example,

Put differently, in any democracy that could be labeled stable and competitive, it is difficult to imagine a theory of voting that would disavow the roles of equilibria vote divisions and short-lived deviations. (McDonald and Best 2006, p.370)

The authors used democracy in what may be considered a more appropriate way. By stating 'in any democracy that could be labeled...' they are removing the onus to define what they mean by 'democracy' and as such their work becomes more relevant to the reader. Bianco et al (2008, p. 129) are another example of how 'democracy' was specifically used. The authors described a style of democracy 'formal majority rule democracy' and furthermore provided a citation to McKelvey (1976) which sheds further light on what formal majority rule inherently means. Finally, Herrera and Kapur (2007) also demonstrate a clear usage:

...take democracy as the concept of interest to us. Depending on our *definition of the concept*, [emphasis added] dimensions might include fairness of elections or civil liberties... (Herrera and Kapur 2007, 367)

The authors broached the subject in a convincing way by stating 'depending on our definition of the concept' which—like Bianco et al—keeps the reader from confusing definitions. It bypasses the fact that 'democracy' has no post-universalist definition *and* recognises the need to disclaim the parochial nature of a particular 'democracy'. It is, in

short, a coup for solving a long-standing problem between political theory and empirical political analyses. There is a proven path in the literature regarding the way 'democracy' is used in empirical studies. It is the 'disclaimer' method and, as was hopefully shown in the arguments and evidence offered above, is clearly effective at bypassing the 'democracy' problem.

Conclusion and Comparative Discussion

In D2, the non-formal category dominated the results.²² Certain works, like Tilly's or Read's, did not out rightly stipulate for example 'this is what I see democracy as' but was a type of work wherein the reader must gradually learn how the author conceptualised 'democracy'. In cases like this, it also pays to investigate previous works as more often than not the author(s) will have explicitly conceptualised 'democracy' in them. This might also make the process of figuring out how a concept of 'democracy' in a later work may have changed significantly easier (for any wishing to track the morphology of Tilly's 'democracy' for example).

Certainly, it can be argued, that a better study would have been to survey thirty books specifically trying to define 'democracy'. However, such a study would not work with the argument that is trying to be made in this article: that the majority of contemporary political thinkers (whether empirical or theoretical) are not engaging the concept or term with sufficient care and clarity. Even if the term is of marginal importance to an article as it is for numerous pieces in D1, because it is such a problematic term it should either gain greater consideration to qualify what is meant by its inclusion or we avoid the concept entirely (as in the suggestion made earlier concerning Laslier's brilliant work). It is hoped that this small analysis of the D1 and D2 datasets, however, has shown convincing examples of where thinkers *have* taken care with 'democracy' and how doing so has benefitted their arguments. In a small way, this work may help to understand how to better address 'democracy'. It provides scholars with a tool, the 'disclaimer' method, which will allow empiricists to bypass theoretical difficulties with 'democracy' in their works. A future study looking at a large number of books specifically trying to define 'democracy' is, however, needed. So too is an analysis for measuring the clarifying impact of 'disclaimers'.

What are the consequences of not using a disclaimer? In the first instance it creates a degree of confusion in the work as aforementioned. Should the reader not understand what is meant by 'democracy', this creates a level of nebulosity which may take away the robust nature of an analysis. In the second instance, and especially in cases which use 'democracy' as a key term or concept, the misuse of the term could potentially warrant a complete reconsideration of the argument. But most importantly, the misuse of 'democracy' in a work may disempower other equally valid conceptualisations (and the populations behind them) by appearing to represent 'true' democracy when really the author is representing a specific concept of 'democracy' and a specific history or

population. Thus being careful with how we relate 'democracy' in our work to the reader may remove a degree of bias, may recognise and situate a parochialism in the argument, and will add clarity to the argument overall.

This was seen firstly by discussing the particular heuristics this work would be using (in the introduction) and then offering the evidence found in D1 in two sections: the first looked at the shortcomings present in the use of 'democracy' and the second looked at where scholars have made significant improvements. The analysis on the literature found in D2 was presented in an attempt to understand how certain contemporary political thinkers are conceptualising 'democracy' in books. D2 supported the point that a reference to a thinker is not sufficient to tell the reader what is meant by 'democracy'. A disclaimer is still needed. The results of both studies establish the central argument of this work: that 'democracy' is still problematically used in the literature, that it is most often conceptualised in a subjective manner, but that there is a way passed that problem by using a disclaimer.

Notes

1. 'Democracy' may be considered another prime example of Ludwig Wittgenstein's language games (see Wittgenstein, 1953). The word's etymological variegations contribute to the difficulty of pinning it down exactly.
2. See Beck and Grande (2010); Keane (2009); as well as Isakhan and Stockwell (2011, 2013).
3. Post-universalism describes an ontology that specifically tries to avoid parochialisms—in that respect it is similar or the same to post-foundationalism as described by Wingenbach (2011, pp.3-19). In Beck and Grande (2010) the authors establish that should an argument for the entire world be made, it must include as internationally diverse research and thinking as possible. It differs from universalism. That ontology, often argued to be a condition of first modernity, takes a parochial starting point and then conducts research to make illegitimate arguments concerning the entire globe. The starting point for any argument in a post-universalist or post-foundationalist ontology must be global, complex, capacious, and 'just'. This is a fundamental aspect of a cosmopolitan methodology.
4. As broached in note #3, Beck and Grande (2010) called for a cosmopolitan turn in social sciences as previous, parochial, modes of thinking are argued to be insufficient to answer problems that are global in nature. Democracy (or a lack thereof) is a global problem. This ties-in with evidence from Isakhan and Stockwell (2011, 2013), as well as from the contributors to their volumes, that I use to say that democracy is a form of government and governance that we as humans evolved with. This argument has a growing basis in biology, anthropology and archaeology especially if we were to consider Seeley's (2011) opus *Honeybee Democracy*.
5. For example: Latin America, Africa, South East Asia, and the Pacific Island excluding Australia and New Zealand.

6. For example: China, Japan, Central Asia, and the Middle East.
7. A significant 'anti-parochial' expectation is derived from the paradigm of 2nd modernity. Therein, scholars are expected to pursue 'cosmopolitan' analytic frameworks and conceptual developments: this is a method that is not widely practiced perhaps because the possibility of defining concepts in this way becomes overly problematic. That being said, and as will be seen in over five examples, when a concept cannot be delivered in a non-parochial universal framework, to err on the side of caution and determine to the reader the subjective quality of a term (like democracy) to be used in a work makes a difference. For more, see Beck and Gagnon (2011) and Beck (2006).
8. This narrative has further problems as Weale (2007) argued. Because Ancient Athens and Swiss Cantons did not include slaves, metics and women (certain Swiss Cantons only extended the franchise to women in 1971) they should not be considered democratic.
9. The term 'Western' is placed in brackets throughout this article because it too is difficult to conceptualise as convincingly argued by Marquand (2011). This may also be said concerning other geopolitical terms such as the 'East,' 'Far East,' and to some degree 'European' (although Marquand has helped to clarify the conceptual boundaries of the latter). In this paper, 'West' concerns colonial Europe and her offshoots.
10. Josiah Ober; mainly a forthcoming work arguing that democracy in classical Athens was more than just voting and discussing by a select citizenry, it was about getting things done.
11. Sonny Lo; in a forthcoming work this thinker argues that previous efforts of democratization were flawed precisely because of the way democracy was conceptualised by all parties involved.
12. This work is not arguing that 'Western' or Classical conceptions of 'democracy' are worthless. Rather, these bodies form a critically robust literature that serve as a powerful tool for comparative politics. To give one example, should the possible varieties of growth in Baganda democracy (an indigenous people in Uganda that have their own non-European influenced traditional democratic systems) be considered, various typologies in 'Western' ideology that have advanced institutions, processes or theories can be comparatively looked at to see if any of those would be of use to the Baganda method. However, in the empirical realm, parochial assumptions in analyses which extrapolate their findings globally are often seen and this may lead to disempowering the Baganda democracy (in this scenario) as the Baganda may have their own understandings or desires about elections, voting and the institutions of campaigning. It may be said that the imposition of one conceptualisation of 'democracy' over another (even unintentional) is in itself non-democratic and a violation to some degree of fundamental rights.
13. Why is autocracy considered the opposite of democracy? Aristotle classified autocracy as the rule of one and democracy as the rule of all or many (mob in his critical view). In this spatial scale it makes perfect sense. But things become slightly difficult should we consider Keane's argument in *Life and Death*, 2009,

that in a 'democracy' there are no rulers. Does this invalidate the scale? Perhaps it still stands but builds on the Aristotelian argument that autocracy is the rule of one whilst democracy is the rule of none. However, this too is problematic as the rule of none brings to mind classical anarchism.

14. Wilson and Butler, 'A Lot More to Do.'
15. This organization publishes a yearly 'Freedom in the World' survey which monitors 'trends in democracy' among other variables. Should the reader look into the survey's 'key democracy indicators', many of the same questions encountered with the Polity III index are also present. For example, there are limitations to the way in which this survey contextualises democracy: why do elections take such prominence and how does Freedom House understand elections to be guarantors of 'democracy' when most, if not all elections, are considered flawed? Despite this, it can be seen that certain areas that the survey paid attention to conform to certain pieces in the 'new' literature. For one, there is a focus on violence as an enemy of democracy (p. 2) which is a central argument in Keane's work.
16. Karl de Schweinitz, *Industrialization and Democracy*, (Glencoe: Free Press, 1964).
17. In other areas of O'Donnell, Schmitter, and Whitehead the authors make reference to various styles of 'democracy', institutions currently affiliated with 'democracy', but do not give a post-universalist and empirically robust concept of 'democracy'.
18. International Social Survey Program (National Identity Module), 2003
19. Kedar and Shively (2005) were discussing multilevel variables. One could argue that by considering 'democracy' as inherently varied in theory that it has various levels to it. But this was not sufficiently explained in the work and appeared unclear as the reader is left to try to understand what a multilevel democracy may be and how this consideration of 'democracy' may then make it a suitable macro-level variable.
20. Przeworski, Stokes and Manin (1999) is a good source for this argument.
21. The literature suggests that US-American liberal democracy is dependent on various institutions and processes such as a written constitution, a Bill of Rights, the separation of powers, the act of voting, elections, a bi-cameral system, and some degree of tension between 'republican' and 'democratic' values. One may concede, however, that this term is a contested one and like 'democracy' or other typologies of 'democracy' it has a variety of conceptualisations.
22. Sundstrom, Soneryd and Furusten (2010) came close to using an empirical methodology in their work. However, they rationalised that democracy is 'formed' and 'reformed' (p. 2) and due to that it is necessary to understand and organise which values are *associated* with democracy so as to understand whether governance is enhancing or weakening democracy. This is different than trying to understand what a post-universalist democracy might be. It was also thought that Launis and Raikka (2007) might have used a qualitative method in their definition of democracy but they did not show their method and rather directed the reader to a few thinkers (see for example p. 17, footnotes 8-15).

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ANCILLARY MATERIAL

Appendix A: Dataset 1

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Culture and Corruption

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"Evidence of culture is how people behave when no one is watching."
(Robert Diamond, Jr., Chief Executive, Barclays Bank, 2011)

Abstract

Despite the recent proliferation of knowledge about the many different facets of corruption, its cultural side has yet to receive the attention it deserves. Drawing on contemporary research, this meta-analysis explores the complex relationship between culture and corruption. It focuses on local behaviour that contradicts professed communal ideals and aspirations. It highlights moral values in conflict and the tainted nature of corrupt practices. It suggests that the many scattered findings in the literature are still inadequately integrated largely due to the narrow perspectives of specialists who fail to reveal the cultural essence of corruption that its victims fear. It finds that some fortunate communities around the globe and against the odds have succeeded in cleansing public life by emphasising strong political and communal will to curb corrupt practices, continued vigilance to prevent reversals and curtail new deviant avenues, and inculcate personal integrity to resist the temptations of personal gain at the expense of the greater good.

Unlike the natural sciences where knowledge is sought for itself and research can be conducted objectively and impersonally, the social sciences have to deal with unpredictable and erratic human behaviour and research has to be mindful of culture and hidden agendas. An obvious example is the field of public administration and within it the study of corruption as something that is believed to deviate from what should be or what departs from normally expected behaviour. In this case, it is conduct unbecoming public employees that contradicts collective norms such as standards of honesty, integrity, truthfulness, responsibility, enlightenment, and propriety that are passed on from one generation to another. Researchers have to be mindful of their own preconditioning and the hidden agendas that may be involved. Their predisposition cannot be divorced from their background and experience, such as where they were born and bred, who brought them up, what instruction they received from authority figures, the circumstances under which they lived, and eventually what sparked their interest in studying misconduct that offends and disappoints. What they care to reveal is highly coloured by many such personal factors and also what might happen to them should they offend community taboos.

That corruption exists is obvious. That it is rooted in local cultures is less obvious although few are unaware of its presence once attention is drawn to it or are in any position to combat corrupt practices in their midst. Their powerlessness perpetuates such misconduct, probably strengthens it, and does much to explain why societies cannot seem to live up to their ideals, why they do not practice what they preach, and why they are so flawed. So, what accounts for why people go astray, why they fail to prevent wrongdoing, why they are corrupt and corrupted in the wider meaning of that term, and why anti-corruption measures so often fall short? Much of the study of ethics has concentrated on right-doing (Martinez, 2009); less attention seems to have been paid to wrongdoing. Although the cultural sources of ethics are fully acknowledged, when dealing with corruption they are somewhat fragmentary (Svara, 2007, West and Berman, 2006) and tend to stop short of considering the powerful cultural forces at play that have perpetuated corruption and obstructed brave efforts to contain and reduce its prevalence. Most ethicists analyse the many different specialised forms of corruption without identifying its overall nature and the cultural glue that integrates them. A much better job is done in demonstrating that corrupt practices assume many diverse, interconnected, and reinforcing forms that defy simple classification and easy differentiation (Van Wart, 1998) and in identifying comprehensive measures that could reduce their incidence (Spector, 2012, pp. 283-293).

Just to illustrate how complicated it is to tackle the cultural dimension behind corruption, researchers now recognise that when, for instance, a political regime is held to be corrupt, its residents protect themselves as best they can by devising their own unofficial counter-measures to temper its harmful impacts. When private business is characterised by sleaze, public business cannot be expected to be immune from its contamination, and vice versa whenever the administrative state has dealings with private organisations. When religious authorities act hypercritically and unethically, their followers are likely to copy their poor example. When communities discriminate, their social mores are probably taken for granted, enforced, and perpetuated for generations in defiance of the law. There might well be straightforward explanations at work, such as abuse of position, power, and authority, the presence of scarcity, the temptations of immorality, the existence of irrational fear and hatred, and the failure of character to confront such departures from societal expectations. These are probably rooted in the "conceptions of the desirable characteristics of a particular people" (Husted, 1999, p. 341) following the broad definition of culture as *"the collective programming of the mind that distinguishes the members of one group or category of people from another... with consequences for beliefs, attitudes, and skills"* (Hofstede, 2001, pp. 9-10).

Culture viewed as shared patterns of meanings and understandings among group members (Van Wart, 1998, p. 166) may not even be recorded or necessarily spoken but merely understood by a gesture, a handshake, or a symbol. Whereas ethicists want to

believe that most people try to do the right thing, in reality many knowingly do wrong without being sociopathic. This occurs when corruption is accepted and taken for granted, so much so that it takes place in full view, like giving bribes or cheating on taxes or having privileged access to life-saving public services (Rothstein 2011). On a grander scale is the effect that culture has on the predisposition and potential of societies for group violence, their sense of superiority and self-doubt that prompts them to dominate and to exclude out-groups from the moral domain, to indulge in negative stereotyping, and to view scapegoats as obstacles to the realisation of the ideology that fits their culture (Procter, Nof, and Yih, 2012, pp. 8-10; Staub, 1989, pp. 18-20).

One of the more thorough examinations in recent years of the cultural dynamics behind corruption is a study of the alleged rapid decline in the values of the Indian Administrative Service (Sunder, 2011). The analysis starts typically enough by defining corruption as the abuse of public office for private gain but then spreads its focus on the much wider arena of individual integrity, administrative culture, and Indian society in a country where corruption is endemic and systemic. It points a finger at a society steeped in particularism with strong bonds of kinship and caste ties going back to ancient India where amassing wealth through tactful (unethical) means was not censured. Once the British colonial rulers who had tried to impose their foreign ethical standards left in 1947, Shanthakumari Sunder alleges that indigenous public officials have since learnt to exploit not serve, with political black money as the source of all evil encouraged by public apathy and individual indifference to gross violations of human rights, misgovernment, and injustice suffered without much protest. Corruption had become accepted practice and creditable. The social stigma attached to corrupt money had been erased from society. In short, "The majority of the Indian society being illiterate and poor has to accept corruption as a way of life and tolerate corrupt leaders, as long as they get something as their share of the spoils" (ibid, p. 247). She does not go as far as Akhil Gupta who accuses the administrative state in India of structural violence on the poor, lower-castes, and indigenous peoples and where public ameliorative programmes are arbitrary, uneven, and erratic if not complete failures (Gupta, 2012).

These controversial conclusion probably contain within them truths that could be repeated elsewhere (Burke, Tomlinson, and Cooper, 2011). For India, it probably has justification in that country's cultural context of social tolerance and easy forgiveness (Tummala, 2002) and most certainly in regard to the influence of business lobbying in Indian politics (Yadav, 2011). They follow a long series of scandals that so enflamed people that the government decided that it had to take action to head off more draconian measures to cleanse governance and society advocated by populist Anna Hazare. Scandals elsewhere around the globe in Italy, Spain, Greece, Russia, Brazil, Egypt, Tunisia, and Libya, and protests against austerity measures taken after the 2008 global financial crisis have also emboldened protests in the streets against such institutionalised corruption as a socio-pathology.

Shedding More Light on Cultural Corruption

Evidence mounts that the cultural dimension of corruption has been for too long a poor relative of other studies. To some extent, this could be due to its being still a taboo topic in polite society, an assumed unmentionable. Yet, several persistent researchers have been able to penetrate the secrecy, the official propaganda, and the deceptions as in Cambodia where corruption is rife and anti-corruption laws have been gutted into meaninglessness (Brinkley, 2011, Kerbo, 2011, Nissen, 2008) and Croatia where corruption remains an integral part of government as in most of southeastern Europe (Goldstein, 2011). The corrupt do so as privileged groups with special access across Eastern Europe and central Asia as revealed by investigations into bribery, state capture, privatisation, taxation, customs, economic regulation, and criminal justice administration, all of which are inter-connected (World Bank, 2011). Corrupt practices are cause for comment among international observers in many of the world's trouble spots where they witness corruption as a way of life for the populace with which they and their superiors as outsiders are unfamiliar. Their self-perceived superiority as outsiders attributes much corruption to the primitiveness of inferior societies lacking modernisation, meaning the absence of the attributes of more advanced civilisations like their own.

Clearly, individuals are cultural, not just political or economic, animals. They are products of their families, communities, and societies, social beings shaped by their circumstances, not just self-enriching singletons fulfilling their own selfish needs and ambitions. They have a public as well as a private life. Which one gets emphasized varies in time and place determined by factors beyond their control. At one extreme, people are ready to sacrifice themselves so that their community or another person survives. They give little thought for themselves when they risk death to save or help others in distress. Their actions are considered to be selfless heroism. At the other extreme are those who put themselves first before anything or anybody else; they care nothing for others who cannot be of use to them. Alas, this is often the public view in many localities of professional politicians and leading public figures. The contrast emphasises the difference between ends and means and the personal values involved. It draws attention to the problems posed by "value relativism, nihilism, and materialistic individualism" (Alatas, 1990, p. 11), to the devaluation of public goods and services, and to the technical rationality that poses its indifference, impartiality, and objectiveness in public policymaking (Adams, 2011). This last has often been portrayed in parodies of the heartless, mindless, and soulless bureaucrats who go by the book and the scheming officials who connive at evil.

Families, communities, associations and organisations teach their members how to think and behave in return for which they expect their members to be obliged not to offend, deceive or cheat but to respect, favour, and reward them. They are not always successful in preventing defiance of prevailing social norms. Socialisation fails to

achieve obedience and conformity. Probably, no society has ever been totally free of conflicts over beliefs, values, morals, ideals, expectations, hopes, and what constitutes the collective good. At no time have people in recorded history been able to live up to their ideals of proper behaviour. But today there is a difference. Whereas in the past knowledge about misconduct, particularly in high places, has been confined to the few within inner circles, it is coming increasingly into the open (Spector, 2012). Not a day passes when somewhere around the globe mass media highlight wrongdoing in virtually every aspect of human activity not just in the corridors of power but also allegedly in warfare, business, religion, research, education, communications, entertainment, and sports down to the smallest detail (Burke, Tomlinson, and Cooper, 2011). No literate person can be unmindful of the amount of sleaze, black money, lobbying, self-dealing, unauthorised self-enrichment, bribery, fraud, manipulation, deception, organised crime, and other forms of wrongdoing that occur and accumulate (Camilleri, 2011).

Everywhere, people have stories of corruption, "not so much the 'reality' of its existence as the fact that it is widely *believed* to exist, the complex narratives that enfold it, and the new relationships and objects of study that those narratives create" (Haller and Shore, 2005, p. 6). Eventually, such talk does bring rage and violence, instability and terrorism, inequality and jealousy, exclusion and suicide, and cynicism and distrust of all public institutions. Even where things do not decline that far, there is the coarsening of public life, the rough-tongued distain in communications, the abandonment of standards, the currying of favours with the unscrupulous, and the wholesale corruption of values and general malaise in both public and private life, with public leaders shirking their responsibilities that "sends the message that anything goes... as long as we can get away with it" (Burns, 2011, p. 3). If this is the situation in the United Kingdom, what are the prospects in Afghanistan where corruption is traditional, endemic, and cultural and real power belongs to shady characters who hold the populace to ransom and terrorise those who will do their bidding (Rosenberg, 2012)? Once the rot sets in, it proves extremely difficult to reverse.

The Question of Values

Where once corruption was very much a taboo subject, it can no longer be ignored or brushed aside, given its global reach. This newly found publicity is creating the impression that corruption is getting far worse than it ever has been which in turn gives rise to demands that much more should be done to reduce its nefariousness. Unfortunately, as much corruption still remains hidden and many of its perpetrators have little desire to show themselves, its actual extent cannot be accurately known. Nonetheless, it does have to be taken more seriously. Despite all the protestations to the contrary, corruption is deeply embedded in human conduct, so deep within society such that very few can escape it and avoid the pulls of personal ambition and avarice that tempt people to indulge in misbehaviour. Presumably, more thorough research and investigation should eventually reveal why it persists despite every reasonable attempt

to combat it.

As corruption (bad conduct) is the opposite of ethics (good conduct), any consideration has to begin first with what values prevail or are assumed to prevail in any community because such values and their underlying beliefs can change in space and time, sometimes slowly but at other times quite rapidly (Frederickson, 2002). In the past, values were derived mainly from religious beliefs and practices. But all societal institutions are instrumental in determining values and if government is the authoritative allocation of values, one recent study suggests that the administrative state imposes its special kind of morality, specifically the universal administrative values of efficiency, economy, efficacy, expertise, and equality (Jordan and Gray, 2011). It warns that if societal values are ambiguous or contradictory, "then evil can seep in through cracks in law and policy, unnoticed by those enforcing it, until an abyss of evil swallows them and countless others whole" (p. 9). It stresses that values are context-laden, that they inevitably give rise to moral conflicts among the rulers themselves and between the rulers and the ruled, and that they are intimately related to tradition and culture. Other than reminding its audience that most public values have a strongly communitarian theme (p. 347), it implies that public administration should be secular, ignoring local religious and moral values altogether.

Yet, many religions and moral codes are unanimous in stressing the need of public (and private) officials to acknowledge the moral responsibilities of their actions and accept accountability for their decisions. Corruption arises when they shy away from such duties because of their indolence, moral relativism, and disrespect of moral teaching and training (Dwivedi, 2011, p. 4). Public officers have first to be motivated to serve the public; they cannot be forced to behave ethically. Without dedication to public service, there cannot be ethical or good governance.

Public service should be a vocation, a purpose-driven life devoted to the well-being of all... by setting a high standard of moral conduct and by considering their jobs as vocations akin to religious calling...always... thinking ahead of the community, on behalf of the community. (ibid., pp. 8-9)

From time immemorial, a fundamental divide has existed over whether ethical notions are universal spiritual values derived from belief or stem pragmatically from human needs, designed by acknowledged authorities, and applied as circumstances require. Both sides of the divide are somewhat self-serving, demanding obedience to their authority. They use morality as a control device. But even when the spiritual and the temporal greatly coincide (orthopraxy) and reinforce one another's ethical stance (Roy, 2010, pp.113), cultural conflicts occur in regard to different categories of adherents, followers, and residents. Non-conformists include a whole range of people from the mentally disturbed who menace others and for their own self-protection have to be separated out because they might corrupt others or be injured by them, obstinate

individualists, the devious and sly who take advantage of others' conformity, eccentrics who think differently, the unconventional, and the scared who fear that if they do not outwardly cooperate despite their disinclination, they and their loved ones might come to some harm. These and probably other groups can be contrasted with those who do willingly conform to social norms, do believe and practise what they preach and what is preached to them, and are not corrupt and cannot be corrupted in any serious way that harms others.

In this divide between the moralists and the pragmatists, the line between right and wrong behaviour is blurred and indistinct. On the one side, the moralists, sure in their beliefs, venerate personal integrity that honours their conceptualisation of right conduct transformed into social norms (such as being polite, benevolent, kind, caring, thoughtful, loyal, conscientious, decent, and fair-minded). They are appalled at any contempt of these social norms and at any acquiescence to what they consider as to open misconduct. In their view, authority figures should resist any temptation to deviate and should work for the common good, never in their own self-interest. Authorities should set the example of good conduct, being virtuous, honest, truthful, and trustworthy in straight dealing. But they, like everyone else, are not expected to be perfect. Slight or petty transgressions can be forgiven providing these are relatively harmless, undertaken for good cause, and result in benefits to all. Otherwise, misconduct should not be tolerated. Wrongdoing should be exposed and the guilty made to pay appropriately for their sins as a warning to others who might be led astray.

On the other side are the pragmatists who know that things do not work this way and that people are fallible, even despicable, hateful, and incorrigible. They acknowledge that deviants are likely to hide their alleged misconduct and avoid exposure, being conscious of likely public disapproval. Miscreants (dubbed the corrupt) will try to cover over any traces that might be discoverable and frighten off possible whistleblowers. When caught, they will try to bluff their way out and make excuses and rationalisations for their alleged misbehaviour. Indeed, in time they can become quite contemptuous of public opinion and eventually brazen enough to defy critics to the point where they feel sufficiently secure to parade without concern their breach of social norms. This shows how powerful they really are. They believe that they can get away with their misconduct simply because most other people given half the chance would do the same in their position (Abagnale, 2001). They are just being practical. Why not take advantage of the opportunities available? Why not enjoy the comforts of position to compensate for all the sacrifices one has made to be where one is and for taking on such heavy responsibilities? In any event, most others in inferior positions are just envious and lack the talent, intelligence, industriousness, inventiveness, and ambition or too meek, complacent, and lazy to advance. In brief, "morals are relative, the product of arbitrary tradition and social conditioning" (Orr, 2011, p. 50), i.e., more a matter of opinion and circumstances than fixed and universal. They depend on time and location and majority rule, which of course does not make them right by the moralists

who find the pragmatists too tolerant of uncommon differences between cultures. This divide gives fuel to the cynics who see ethics as one big con-game manipulated by elites intent on ripping off the masses, bamboozling the gullible, deceiving the naïve, and dangling out impossible promises and imaginary rewards in this life or in the afterlife (Ingram and Parks, 2010, pp. 89-95), and encourages unscrupulous hit men (Hiatt, 2007).

The Ubiquity of Cultural Corruption

What this divide between value (ought) and fact (is) amounts to is that at no time can those in authority know for sure whether or not the norms under which a society is supposedly working are actually being followed, who is sufficiently deviant individually and collectively to be designated as corrupt, how many turn a blind eye to corruption because they do not think that corruption and the corrupt are all that harmful as is made out, and how many believe some corrupt practices can even be beneficial in certain circumstances and do not object at all to them. Even apart from the fact that the authorities cannot always trust appearances, why should other people follow what the authorities, their supposed betters, preach when the nature of authority itself can be so corrupting? What is it about authority that makes its holders believe that they can get away with their misconduct, hold themselves above the law, break the rules they lay down for others, and believe themselves accountable only to themselves? Does the unceasing need to make compromises in office, make deals, and take tough decisions eventually wear the incumbents down until their core values are lost and they lose their moral compass?

Late in the Nineteenth Century, Lord Acton when commenting on a book dealing with gross clerical misbehaviour came to his famous conclusion that power corrupts and absolute power corrupts absolutely.

Great men are almost always bad men, even when they exercise influence and not authority. Still more when you super add the tendency or the certainty of corruption by authority. There is no worse heresy than that the office sanctifies the holder of it. (Acton 1887, 2000, p. 335).

He was only repeating what many others had said before him, notably Edmund Burke that power rids its possessors of "every humane and gentle virtue" and Percy Shelley that it "pollutes whate'er it touches" (Bruni, 2011, p. 3). Their implication was that whenever authorities exercise their power over others, they are often tempted to put their own interests first. They take advantage of the public trust put in them to disregard their duty to act as guardians of the common good. Whenever anyone has an advantage over others, that position is used to favour self-interest and "it is almost inevitable that claimants will seek favours from authorities and that authorities, in turn, appreciating the strength of their positions, will welcome inducements" (Rotberg, 2009, p.1) by

accepting gifts and honours as an acknowledgement of their superior status and their ability to deny access to public services.

This generalisation probably applies much more in private business matters than in conducting public affairs. Whenever people in public authority put themselves first, they can well place themselves in danger of undermining their own position. Any misjudgment could lead to their downfall when rivals push to replace them by promising to do better. Yet the risk pays off so often that the authorities are prepared to play as close to the edge as they can. Even when they are caught out and throw themselves onto the court of public opinion, they still have the upper hand. They are called upon to make decisions that others are reluctant to take to ensure the survival, security, safety, and welfare of their charges for which they have general backing no matter what. They know that most people are in no position to dethrone them unless really riled up and prepared to confront them in an uneven match. They can generally rely on conformity, complacency, tolerance, a forgiving attitude, admiration, and a hard core of dependents to rally in their defence as long as they claim to be maximising the well being of conscious creatures, a prosperous civil society, and an atmosphere of beneficence, trust, and creativity, pursuant of wholesome pleasures (Harris, 2010), even when to outsiders they evidently are not.

There are many current illustrations of this abuse of authority in rogue states and criminal organisations as might be expected. They even occur in countries that should know better given their recent history. For example, Alexey Navalny, a crusader against corruption in Russia, has uncovered criminal self dealing in major oil companies, banks, and government ministries (Ioffe, 2011). He urges his readers on the internet to scrutinise public documents for evidence of malfeasance and post their findings on the web. His work has already led to the cancellation of numerous government contracts and the revelation of substantial kickbacks in preparing for the 2014 Winter Olympic Games in Sochi. His worry as a whistleblower is the lack of transparency in both public and private sectors and warns investors that "Russian power structures are corrupt inside out" (Loiko, 2011, p. A9). He points out that there have been few corruption cases that actually end up in court just as in India where there are few prosecutions and even fewer convictions (Sunder, 2011, p. 248). Public leaders can suggest as many measures as they choose but when the police, the prosecutors and the security services are all involved in covering up for corruption scams, culprits are rarely investigated (Loiko 2011, A9). Pulling the threads together, the harsh conclusion is that corruption in Russia defines public life at every level (Legvold, 2009) and gets worse with its drain on the economy and society (Saunders 2011). Not surprisingly, some two-thirds of Russians consider corruption to be the country's most serious problem (Leonova, 2011).

If the truth be known, as in Russia, public leaders elsewhere in every region around the globe have been notoriously corrupt and their corruption has been accepted as a way of life, justified by them as unavoidable, and accepted by their followers because the

latter have had little choice (Johnston, 2005). The public purse has always been a tempting target for personal benefit. That motive has been one of the attractions of authority and worth the risks and sacrifices involved in pursuing a career that will eventually end up joining the elite of the day and hopefully entrenching one's heirs and close friends also in that position. This has now reached the point that the spread and interconnection of such corrupt and corrupting behaviour is seriously threatening global security and world order, destabilising countries, handicapping global development, widening the gap between rich and poor, undermining moral values, depriving individuals of their fundamental human rights, entrenching rogues and criminals, and blocking good government (Elliott, 1997, Huberts, 2007, Rotberg, 2009).

Is this daunting view justifiable? Is it true that anything goes? By whose rules do people play? On the one hand, the authorities set the rules for everyone else but ignore them if they believe they can get away with that. On the other hand, their followers understand that while they have to appear to obey those rules, they have their own different agendas if they can avoid drawing attention to themselves. This power distance gives rise to conflicting views of how much power holders can be trusted, how much should be left to experts, how much the masses can check on power holders and experts, and whether the suspicion of corruption can ever be erased (Hofstede, 2001). The outcome is largely decided at street level where the authorities should have the advantage although they cannot possibly know what happens at every point of execution where the formal rules may be waived altogether or modified or even sabotaged by conniving front line staff. Ethnomethodology posits that how the rules get interpreted and applied is a matter of mutual negotiation and compromise in which the decisive factor is common sense assumptions based on knowledge and reasoning that are needed to make social life work (Garfinkel, 1967). Things should go well where the participants share common values but where there is wide disagreement and authority has to be imposed, then resentment may eventuate into defiance, disobedience, and vengeance. When violence occurs, offending principals are targeted by mobs unless they can escape in time.

The Moral Dimension of Cultural Corruption

These days, most execution occurs through bureaucratic organisations that endeavour to impose formally standard universal application. It assumes willing compliance within a fairly common culture wherein people share most values. This is not the case in Russia or anywhere else outside those places where there exists a strong will to minimise corruption in public life as evidenced by those countries and societies that have a justifiable consistent reputation for straight dealing, openness, honesty, and other public virtues, such as Denmark, Finland, New Zealand, and Singapore. Impartial attempts by international bodies such as Transparency International and the World Bank to identify countries that are reputed to be the least and the most corrupt respectfully show the prosperous democracies at one end of a good governance scale and

dictatorships and failed states at the other (Heller, 2009, pp. 48-49). Even so, all is not well among the reputed virtuous.

There is a specter haunting democracy in the world today. It is bad governance—governance that serves only the interests of a narrow ruling elite. Governance that is drenched in corruption, patronage, favouritism, and abuse of power. Governance that is not responding to the massive and long-deferred social agenda of reducing inequality and unemployment and fighting against dehumanising poverty. Governance that is not delivering broad improvement in people's lives because it is stealing, squandering, or skewing the available resources. (Diamond, 2007, p. 119)

Clearly, cultural factors are behind the persistence of other types of corruption (psychological, social, anthropological, political, economic, and administrative) all of which interact and overlap, thereby reinforcing one another as to whether they confound or support anti-corruption campaigns. This makes all the difference between corruption as an inescapable **way** of life and corruption as an incidental **fact** of life that can be contained.

Moralists have always preached that public leaders if so minded can at any time choose to end the rotten systems they inherit and set the example of how things could (and should) be run and put into place a governance system that would not tolerate dirty hands by which is meant authority that breaches expected public morality (Dwivedi, 1987). Most holy books detail similar systems of good governance that could be adopted and insist that public leaders should be held to a higher moral standard than that of their followers. Throughout human history, there have been rulers who met this challenge, resisted the temptation to rule in their own self-interest, vowed to eliminate corrupt practices, and prosecuted officials who failed to live up to the ethical code expected of them. Their number has probably increased over the past one hundred or so years as government has become more representative. Official codes of ethics have been adopted, respected, and enforced. Professional career public servants have refrained from improper behaviour and have disciplined their colleagues who have been discovered besmirching their profession. It is universally understood that as moral leadership is crucial for tackling the challenges of the time, more studies are being undertaken to improve leadership and developing future leaders who are expected to make a difference (Fairholm, 2011) and to ensure greater standards of personal integrity.

Yet despite these efforts corrupt officials can be found throughout governance in many, if not all countries (Garfinkel, 1967, Johnston, 2008, Quah, 2011). Corrupt practices persist because the people with whom they deal still stick informally to age old attitudes and practices and resist changing their ways. Members of the public stay loyal to proven crooks and thieves in public office. People accede to the succession of the rulers' unproven relatives, cooperate with organized criminals, take poorly paid

positions to make a living through bribes and bribe others to give them favours in return, and seek to gain access to patrons who can advance them. For these, corruption is common sport. Whistle-blowing is considered a breach of comradeship and harmony likely to provoke retribution. To outward appearances nothing appears untoward but closer inspection reveals that things are not at all what they ought to be. Informal deals are being made not to appear to be alienating, offensive, unkind, unreasonable, unduly harsh or vindictive but to make life easier, decisions more acceptable, relations more pleasant, and generally soften relations between the authorities and their charges, the rulers and the ruled. This is ethnomethodology at work deeply embedded in the prevailing culture. "Corruption requires not only complicity and trust, ...but also shared knowledge, a shared language; even those who choose not to 'play the game'... nonetheless know its rules and its stakes" (Zinn, 2005, pp. 233).

The situation is complicated when people employ fixers to "facilitate speedy completion of transactions or undue priorities, or refrain from taking due processes against interested applicants for pecuniary gain or any favour, advantage, or consideration" (Zelekha and Werner, 2011, pp. 617) for a host of reasons that enable them to get a better deal. At first, the use of fixers may appear to be innocent, innocuous, trivial, and mutually helpful but this situation can quickly become institutionalised and prevent reforms when operated by syndicates protected by law to grease the operations of governance to help their clients lost in the bureaucratic maze or dissatisfied with the service they receive. These fixers who resemble lobbyists can be insiders and retired insiders who know their way around and can guarantee a favourable outcome, or outsiders who get results through their mediation and influence and professional lobbyists who act on behalf of their clients whenever something big is in the offing (ibid, pp. 625-6).

Moralists worry about these informal deals. They would much prefer openness, the sunshine that would expose wrongdoing, discrimination, irregularities, lapses of integrity, and departures from virtue, honesty, trustworthiness and straight dealing. They do not expect perfection; they allow for slight transgressions that are relatively harmless, undertaken for good cause, and generally beneficial. So, minor corruption can be overlooked. Major offenders should be exposed and made to pay appropriately if only as a warning to others who might be tempted to copy their poor example. The offenders are of course the corrupt who roughly know how far they can go before being exposed and subjected to public disapproval. They bluff their way out for they are savvy at justifying themselves, covering their traces, and scaring off truth seekers. Unfortunately, they become so adept that they get convinced of their own infallibility and contemptuous of being caught out. They even get so brazen that they parade their misconduct to show how powerful they are and how weak everyone else is. They come to believe that anyone in their position would do much the same given the chance. After all, most others are probably just envious or unqualified or less competent, altogether

untalented and undeserving (Rand, 1947, 2005). There ought to be some compensation for undertaking public responsibilities. So why not take advantage of one's position? Every decade seems to offer variations and additions on this theme. The ingenious still find ways of evading detection.

How far do people with dirty hands reach? Scandals reveal that there is no limit. In all walks of life, the corrupt rise to the apex, and the higher they go, the more damage they can do and the more power they can employ to hide their past misdeeds and justify their current misdeeds. They have their mentors, collaborators, stooges, henchmen, and enforcers who leave many innocent victims in their wake (Porta and Vannucci, 2012). They show little remorse. Indeed, they are proud of their accomplishments and their gall can be incredulous. They have no regrets. They make sure that history records their side of the story as told by their devoted believers regardless of the facts. For instance, in the Soviet Union under Stalin,

There was room... for altruism, generosity, nobility even, but the capricious arbitrariness of the regime left even more room for cruelty and corruption. Worst of all was the terrifying fear and insecurity felt viscerally at all levels of society... you sensed an invisible trapdoor beneath your feet that might yawn open at any moment and drop you into an inferno from which there was usually no escape... you could be arbitrarily arrested, beaten, shot, or starved to death, or condemned to a life of slavery, and no one could escape the risk (Scammell, 2011, p. 48).

The Soviet Union although extreme unfortunately has not been that exceptional among the blackest regimes. Even in the most reputable regimes there are occasions when leaders with dirty hands are exonerated, celebrated, and revered. People with social standing expect preference and deference and to be given the benefit of any doubt. But people without much status also try to get favourable treatment by fair means or foul. This seems instinctive to human nature like the inner drive to succeed that pits one person against another. Where one person may see this as part of life's struggle, another may view the same behaviour as being unfair and unscrupulous. One person may view accumulating wealth as a just reward for providing livelihoods to others while another may see making money as the root of all evil and a diversion from the real purpose of living the good life. The former excuses and justifies what the latter considers unfair and immoral (Skidelsky, 2011). This dilemma arises from relating the dimension of cultural corruption to the broader moral landscape that the mainstream of research on corruption has too often conveniently evaded. When too many different forms of corruption are bundled together, it becomes quite difficult to sort out trends and separate one from another whereas concentrating on specific corrupt practices simplifies analysis. The latter may provide practical concrete technical solutions and remedies but they may only drive corruption elsewhere.

The Taint of Corruption

That many academic approaches to corruption slide around its immorality has been criticised because in the popular mind it is associated with evil, decadence, degeneracy, and decay.

Corruption is more than illegality, breach of duty, betrayal, secrecy, inequality, the subversion of the public interest, and inefficiency, whether those elements are considered alone or together... although all of these theories indentify elements that are often important characteristics of corrupt acts... they are not, alone or in combination, all that compose the corrupt core... [It] is evidence of a moral "virus" or "cancer", an infestation of "evil", all of which often seems to have religious roots... [It] expresses the transgression of some deeply held and asserted universal norm... it presents a vital threat to the larger societal fabric of which it is part [and] challenges the existing order. It substitutes personal self-seeking, family or clan loyalties, or other parochial goals and loyalties for larger societal identification and societal goals... it is a repudiation of the idea that a fabric of shared values is necessary to undergird societies and governments. (Underkuffler, 2009, pp. 37-9)

Because the standard prescriptions for combating corruption avoid moral content and the erosion of moral values, they may fail to grasp the complete root of the problem or critical pieces of the possible solution. They "may also fail to express the urgency of the situation where a country is battling systemic corruption" (ibid, p. 41). On the other hand, in exaggerating the evil of corruption, zealotry could be overdone. Although it is destructive of societies, viewing it "in emotionally evocative and cataclysmic terms may propel it to a status of 'universally causative evil' that is ill-deserved" (ibid, p. 41). At its core, it is deeply emotional and loathsome, threatening and fraught with violence and chaos (Cox, 2008).

Cultural corruption is about what behaviours are considered at individual, organisational, and societal levels to constitute misconduct. What is cultural are the "goals, values and worldviews that are manifest in a specific community's speeches, laws, and routine practices as well as the community's particular way of life" (Shweder, 2000, p. 163). By value is meant "a conception, explicit or implicit, distinctive of an individual or characteristic of a group, of a desirable which influences the selection from available modes, means, and ends of action" (Kluckhohn et al., 1951, p. 395). Hence, cultural values are "those conceptions of the desirable that are characteristic of a particular people" (Husted, 1999, p. 341). Sometimes, there is a broad consensus worldwide but other times there are quite wide differences of opinion about basic values among different societies and their smaller communities, and certainly among individuals. When it comes to corruption, some forms are universally condemned while others are disputed as being just the way public business is conducted in a particular

society and seemingly acceptable by its members because they have little choice other than to go along with the pressure exerted by authorities and peers.

What is most disconcerting is that in some parts of the world, the conservative and reactionary traditions that linger due to ignorance, superstition, and folkways, do not make much sense in the contemporary global society. Visitors from without express their contempt at what they consider are the uncivilised features they observe. They cite, for example, unhygienic personal practices, filth, neglect, witchcraft, tribalism, crime, and cruelty to animals and humans, even cannibalism and slavery (Naipaul, 2010). This situation is compounded by official rapaciousness, kleptocracy, foreign exploitation, local rivalries and hatreds, lawlessness, ubiquitous breakdowns of order, and inordinate waste (Spector, 2012). No wonder corruption is a way of life in such circumstances even without widespread poverty, population pressure, and a robber economy. In such places, even the authorities staffed by Western educated elites echo these observations and admit that things are a mess and work chaotically. Good governance is unknown. Public leaders lack integrity. Civil society barely exists as the inhabitants struggle against widespread iniquity with insecurity, ill-health, illiteracy, poor diets, inadequate public facilities, discrimination, and suppression of human rights. The rot comes from the very top too. Thus,

Liberation movements captured many African governments. They took control, created one-party states, and followed a philosophy of "I liberated you. You owe me!"... Then came the Cold War, which was at its highest during the fight for independence. It didn't matter if you were a dictator or a thief. If you were an ally, then you were a client state. (Auletta, 2011, p. 49)

Bad local leaders set a poor example for their followers. Their lack of will to clean up makes things even worse by institutionalising kleptocracy and being gossiped about in erotic terms (Miller, 2008).

What Some Recent Research Reveals About Cultural Corruption

Because of the contrast in values and expectations from one place to another and the difficulties and complexities involved in trying to measure even known corruption, generalisations are hard to draw. But some seem to be clear according to the latest research although they only skim over the surface and confine themselves to particular parts of the whole. First, as taboos surrounding the subject are shredded, more is known and discoverable. It indicates that corruption or at least the reporting of corruption seems to be on the increase. Concerns are expressed that individual integrity seems to be declining in the contemporary world. In any event, anti-corruption campaigns are disappointing and of only limited success that fades without persistent vigilance. Second, according to World Value Surveys (WVS) and the Corruption Perceptions Index (CPI), countries with seemingly lower levels of corruption have higher levels of

trust among their populations and value their children's independence more. In contrast, cultures that stress economic success but restrict access to opportunities have higher levels of corruption. Amoral familism contributes to corruption whereas Protestant countries seem to have less corruption (Lipset and Lenz, 2000, pp. 116-122). Otherwise, cultural control variables, such as ethno-linguistic fractionalisation, Protestantism, and colonial heritage give some pointers (Yadav, 2011) but these are indistinct and pale in comparison with other causes of corruption (Treisman, 2000).

Other data found that (a) the greater the distance between rulers and ruled, the higher the level of corruption as questionable business practices would be more acceptable to high-power distance cultures, (b) the more collectivistic society, the higher the level of corruption, (c) the greater the masculinity of a culture, the higher the level of corruption, and (d) the greater the level of uncertainty avoidance in a country, the higher the level of corruption (Husted, 1999, p. 345). What role did trust and religion play in curbing corruption? It was found that trust made for a lower level of corruption because officials and citizens cooperated much better in fighting corruption (La Porta et al, 1997, 336-7), that the more hierarchical religions hindered civic engagement as a deterrent to corruption, but once per capita income was taken into account, there was a much weaker correlation (Lambsdorff, 2006, 18), and that democracy, implying a democratic ethos, only mitigated against corruption by allowing the electorate to vote the rascals out of office (Drury, Kriekhaus, and Lusztig, 2006) without preventing another set of rascals replacing them.

Generalisations like these are scattered throughout the research and contradictions can be found in tables relating corruption to cultural indicators and variables (Hofstede, 2001, Larmour, 2012). The explanation is partly methodological but also reveals much confusion over what is or should be studied or what should be the main focus of the study (Banuri and Eckel, 2012).

Then the situation becomes murkier. One observer has explained corruption in terms of "national mentality" (Glinkina, 1998). Another has attributed Asian corruption to family relationships, central imposition, and low respect for the letter of the law, dating back to feudalism (Holmes 2006, p. 179), while others attribute the same causes to cronyism in government-business relations (Perkins, 2000, p. 233) and to gift-giving (Larmour, 2008, p. 226). But are cultural practices used as the excuse for corruption rather than its cause (Alatas, 1968)? A founder of Transparency International, Olusegun Obasanjo of Nigeria, protested "I shudder at how an integral aspect of our culture could be taken as the basis for rationalising otherwise despicable behaviour" (Transparency International, 2000, p. 9). This sentiment expresses the fear that "it would clearly be politically undesirable to delimit moral relativism to the point that it becomes an excuse or justification for corruption" (Zinn, 2005, p.232). Culture has been blamed simply because no other explanation can be found or because it undermines universal comparison.

Yet, ideas about blaming culture will not go away as long as countries refer to their heritage to defy universalistic values and where universalists defer to or at least accommodate claims of national difference (Larmour 2008, p. 226). But "Culture can only explain a certain fraction of the level of corruption and there remains sufficient room for improvement of a country's integrity" (Lambsdorff 1999, p. 2). This assertion makes sense when the correlation between failed and failing states and their high levels of corruption is obvious, ever since *Foreign Policy* and the Fund for Peace began publishing their index in 2005. The same group of countries remains unstable and low on quality of everyday life, plagued by lawlessness and chaos, with illegitimate governments, impoverished economies, inadequate and insufficient public services, extremes of inequality, and excessive capital outflows and brain drain. Judith Tandler has sketched this typical image of poor governance portrayed in international circles:

Public officials and their workers pursue their own private interests rather than those of the public good. Governments overextend themselves in hiring and spending. Clientelism runs rampant, with workers being hired and fired on the basis of kinship and political loyalty rather than merit. Workers are poorly trained and receive little on-the-job training. Badly conceived programmes and policies create myriad opportunities for bribery, influence peddling, and other forms of malfeasance. All this adds up to the disappointing inability of many governments to deliver good public services and to cope with persistent problems of corruption, poverty, and macroeconomic management. (Tandler, 1997, p. 1)

Despite international attempts over the past decade, not much has changed from this grim picture in most failing states (Patrick, 2011, Traub, 2011). Successful reforms have been few. Progress has been slow. Meanwhile, the situation elsewhere has continued if anything to deteriorate to the extent where more victims of corruption have awakened and begun to take action on their own to challenge corrupt regimes, threaten revolution, and resort to violent demonstrations. They believe that unless they do, nobody will take much notice and the authorities will change little if anything as long as they possess the iron glove. Once threatened and once they acknowledge that their agents are beginning to shift sides in identifying with the mob, self-preservation should prompt them to act in common cause until the danger subsides.

Restricted View of the Nature of Cultural Corruption

If one assumes that corruption is widespread and seems inevitable, that people cannot be expected to behave themselves at all times, that it is nigh impossible to grasp the amount that occurs or its scope and variations over time or successes and failures in containing it, a more useful (utilitarian) approach to the phenomenon is to concentrate on its possible sources and limit its scope to the public or official organisations and to narrow it down further to plunder of the public purse, bribery, kickbacks, and

enrichment in public office. The common understanding of corruption is that it consists of dishonest, deceitful, and unfair practices irrespective of culture and there has been much agreement in identifying such wrongdoing without delving into its cultural milieu although it deviates from norms incumbent upon all. This is understandable because the same dishonest, deceitful, and unfair practices are found everywhere and remain much the same from time immemorial whether considered minor, petty, usual, commonplace, expected, and unreported, or grossly abusive, cruel, vindictive, treacherous, destabilising, and bringing massive calculated death and destruction.

Consequently, the major focus in research on corruption has been more on the dishonest practices of public officials conveniently adopting the definition of the United Nations Development Programme as "the misuse of public power, office, or authority for private benefit—through bribery, extortion, influence peddling, nepotism, fraud, speed money or embezzlement" (UNDP, 1999, p. 7), largely following Nye (1967, p. 419). This narrow definition concentrates on individuals who stray from official norms, not their organisations that may be systemically corrupt where wrongdoing has become the norm and the standard accepted behaviour to accomplish organisational goals and where notions of public responsibility and trust have become the exception not the rule (Caiden and Caiden, 1977, p. 306). It excludes many forms of wrongdoing that do not involve money and individuals who do not hold office in order to exploit office, promise to misuse office in the future, and seek not personal gain but to enhance the status, reputation, influence, benefits, and the ability to grant favours of the bodies they represent (Yadav, 2011, p. 3).

More significantly, the narrow definition ignores the grosser forms of societal corruption and systemic global corruption. It does not quite cover the dishonest practices of private and non-governmental organisations such as business lobbies, trade associations, think tanks, law firms, and political parties, the magnitude of corrupt activities, and the presence of informal rules and practices that regularise and inform wrongdoing. Such norms are neither codified nor externally enforced although they "powerfully shape the interests and strategies of public officials and citizens" (Stephes, 2007, pp. 6-7). Nor does it deal with a basis of corruption that allows kleptocracy, i.e. governance by greed where authorities have little intention of following their own laws. Sheltering under extreme partisanship and selfishness, individuals and organisations try to get away with what they can although unlike the kleptocrats they may still accept legal and social norms and expect to be punished if caught. Much more serious is where authorities encourage corruption and have little concern about punishment or guilt feelings which has a corrosive effect on governance and "leads to a culture of acceptance of corruption" (White, 2001, p. 45). Rules and norms are irrelevant as to how authorities and people actually behave and to expectations of how they ought to behave. Thus, in black (evil in contrast to white which is pure) regimes and failed states anything goes limited only by the extent of resistance by its victims if at all. They are "ungoverned spaces" (Traub, 2011, p. 52) and "a threat to their own inhabitants"

(Patrick, 2011, pp. 55).

Stretching corruption wider and wider from official misconduct to societies where chaos and anarchy prevail, where there are no common norms and rules, where no single authority imposes any order, where any and all misconduct is included, creates intellectual difficulties. This is best seen in one of the latest studies by a cast of world experts who try to place the phenomenon of corruption in context and cover the whole spectrum in the aptly entitled *The Good Cause* (Graaf, Maravic, and Wagenaar, 2010). It assumes that by "understanding how different theories define, conceptualise, and eventually deduce policy recommendations amplifies the complexity of corruption" (p. 15). It identifies eight different approaches:

1. *Weberian-idealtypical* which sees corruption as a lack of rationality on the route from patrimonialism to rational legal authority such that loopholes exist in the incomplete bureaucratic system for corruption to occur;
2. *Structural functionalist* which sees society as a collection of interlocking coherent systems that have their function wherein corruption also has its place as facilitating action by greasing governance operations;
3. *Institutional economics* which sees the corrupt as rational utility maximisers who take the most profitable course to further their own self-interest in a world of scarcity. All organisations are vulnerable to exploitation by the unscrupulous;
4. *Systems theory* sees society divided into separate, self-referential autopoietic value systems that when overlapping cause corruption when the penetrating values of one system abuse another system's logic;
5. *Institutional design* believes that as institutions shape behaviour, some governance systems are more prone to corruption than others and it seeks to explore disparate causal mechanisms between rival systems.
6. *Ecological* involves combining micro, meso, and macro levels of corruption research into a comprehensive model;
7. *Post-positivist* focuses on how corruption is socially constructed within a society's contested system of public order, of a public role or resource for private benefit (Johnston, 1996, p. 322). As the meaning of deviancy varies in time and place, empirical research is required to understand the subjective perspective of reality.
8. *Criminological* draws attention to the importance of the psychological make-up of the perpetrators of corruption whose results-oriented mode of operation makes them cross the line between laudable and lamentable behaviour.

Valiantly, Leo Huberts attempts to put all these together in his comprehensive *multi* approach in which he simplified "corruption as the abuse of a (public) authority for private benefit" (p.148) with its multi-level causation and eclectic mapping of factors making for corruption (pp. 146-165). The word "culture" appears at the macro (societal), meso (organisational), and micro (individual) levels related to values and moral judgment (p. 146) and by implication integrity, but this is not elaborated, presumably already well known to researchers

Considerably more was elaborated in another recent comparative study of corruption in selected Asian countries (Quah, 2011) which did pay special attention to its cultural side as had Myrdal's pioneer study of poverty in Asia (Myrdal, 1968), both studies employing a broader definition of culture (Kluckhohn, 1951, p. 86). They reveal wide contrasts between and within neighbouring countries as to how they define corruption, the policy context in which it occurs, the extent to which it flourishes as far as that can be ascertained, the prevailing societal tolerance and cultural supports for its presence, the probability of detection and punishment, and the effectiveness of measures taken to contain it. Even though Quah's study is confined to ten selected countries in Asia, it has much wider universal significance as some features in all of them can be found somewhere around the globe, demonstrating how and why people fail to live up to their avowed values and ideals, how and why people indulge in corrupt activities when they instinctively know what they do is immoral, and why they accept certain kinds of corruption but not others. Much depends on the context or ecology of public life, the participants, and the time as everything is in a state of flux. There is no common Asian corruption. Generalisation is almost impossible. Simple answers are beguiling but the truth is much more complex and puzzling to discern.

For example, throughout the world, gift giving is a feature of reciprocity in social relations as a means of showing respect, as evidence of good will and reciprocity, as a way of receiving better treatment or attaining a mutual benefit, certainly not seen as harming anybody. As such, it is perfectly acceptable until it slides into bribery for unfair consideration, special access and favours, undeserved beneficial treatment, evasion of the law, regulations, codes of conduct, and social norms, pampering superiors, and personal advancement and enrichment. In Singapore, but not in Taiwan, it is discouraged and officially outlawed. In contrast, as in Thailand, Indonesia, and Mongolia, where anything goes that advances the interests of oneself and family, promotes one into a privileged elite, provides debts of gratitude, and solidifies the elite, it is a way of life dividing the haves from the have-nots. In Japan, it constitutes structural corruption (*kozo oshoku*), that includes the black mist that governs politics in the private not public interest, the collusion between politicians, officialdom, and business (including the penetration of the *yakuza* into governance), the revolving door practices (*umakudari* and *amakudari*), bureaucratic bid-rigging, lack of financial transparency, and lavish entertainments at high not low levels. In India, gift giving has become institutionalised bribery as a way of life in obtaining any service but much

depends on the locality as the practice varies from the gross to the puritanical. In the Philippines, it is bound up with family obligations, the accepted use of intermediaries to deal with authority (*compadre*), and debts of gratitude (*utang na loob*) for favours rendered, all of which entrench networks, nepotism, speed money, indebtedness to authority, and the privatisation of public values. In short, gift-giving can be a perfectly harmless custom or it can become divisive with sinister implications for the whole society.

These dysfunctional aspects of gift giving are further highlighted in the most recent detailed studies of corruption at work. One largely focuses on corrupt exchanges in Italy (Porta and Vannucci, 2012). The other is based on the author's experience uncovering the roots of corruption (defined as wealth-seeking power and power-seeking-wealth), designing strategies to reduce its vulnerabilities, and assisting governments implementing anti-corruption programmes with detailed studies of the Ukraine, Senegal, Honduras, and Timor Leste (Spector, 2012). Invariably, both venture into what values and ideals (such as survival, security, and safety) override and justify corrupt practices and the issues of what to do about sleaze, class distinctions, religious disputes, basic human rights, and evil doing.

The first study concentrates on bribery, not just the incentives to the participants and their institutional opportunities to gain but also "the differences in cultural traditions, social norms, and interiorised values that inform moral preferences and role consideration" that push individuals toward corruption which constitute its moral costs "as reflected in the esprit de corps and the 'public spiritedness' of officials, the political and civic culture, the political identity and 'moral quality' of the political class, the public's attitudes toward illegality, and business ethics" (Porta and Vannucci, 2012, pp.12-13). The authors present four models depending on the frequency of corrupt exchanges and the amount of potential benefit that range from the petty, individual, structural, and systematic (*ibid.*, pp. 38-39). They devote only a few pages to comparing national cultures. Instead, they concentrate on how corrupt exchanges work, their relationship with organised crime and lawlessness, and the snowball effects of corrupt networks which adapt to changing circumstances. All four models have to be tackled differently and the authors hint how this might be done with examples of specific measures (*ibid.*, p. 264).

No straightforward formula, no optimal set of norms, institutions or policies, with well-defined timing and content, can be generally applied as a parameter for the evaluation of policies against bribery. Every society, organisation, and decision-making process should find its own elusive amalgam of measures and tools, calibrated on a case-by-case basis to an array of contingent factors. Despite its intrinsic difficulties and potential failures, the fight against corruption encompasses a fundamental symbolic value in itself. (*ibid.* p. 267).

The second study is bolder and much more persistent in its moral condemnation of corruption in general. It too stresses that anti-corruption interventions should be country specific to be sustainable for otherwise they are prone to backsliding and recorruption (Spector, 2012, p. 12). Too much is expected of them simply because they take a long time to take effect. Not the symptoms have to be attacked but their underlying dynamics. The mistake of the first generation (1990s) of international anti-corruption programmes focused on measuring to shame offenders into action. The second generation (2000s) intended to produce institutional reforms and build public awareness had disappointing localised results when embedded corrupt stakeholders reverted to their previous ways. The current wave proposes sophisticated research into the underlying causes of corruption by detectives. Moving too fast may be too disruptive by replacing corrupt systems that work with incorrupt systems that do not. The value of this study is in its comprehensive practical diagnostic tools. If neglected, corruption will continue to wreak its havoc, hurt, and hinder economic, political, and social development.

One of the most perceptive surveys of the current state of the art in relating corruption to culture is that of Peter Larmour based on his extensive work in the Pacific Islands. He probably delves deepest into the intricacies of the subject as his analysis is not just confined to this area but has universal implications (Larmour, 2012). He points out many of the pitfalls that have to be encountered and verifies many of the complexities and contradictions that await the unwary and again confirms that corruption is, like all politics, local. Different groups of people view corruption quite differently reflecting their different worldviews especially "between elites and ordinary people" (p.152). They live with it as best they can in the circumstances. He specifically asked about the cultural aspects of corruption and about how locals interpreted the term "to amplify their indigenous ways of life rather than abandon them" (p. 132). They doubted whether international proposals to reduce corruption would work as they did elsewhere because the locals would operate to fit into their traditional practices, thereby further institutionalising rather than changing them by manipulation. Some things may well be inevitably or unavoidably corrupt. To illustrate this conclusion, one has to return to his previously articulated cycle of cultural corruption (Larmour, 2008).

The Cycle of Cultural Corruption

Larmour's research on gift-giving in Pacific Islands and elsewhere presents a likely cycle of cultural corruption. The following relevant entry points were identified: general suspicion of corruption, identification of particular behaviour or individual as corrupt, seriousness with which corruption is taken, people's willingness to criticise and report corruption, how authorities mete out judgment on corrupt behaviour, implementation of decision, and punishment (Larmour, 2008, pp. 231-4). The whole cycle illustrates how difficult it is to separate the cultural from the structural and institutional.

1. General suspicion of corruption

General suspicion may not be based on evidence but results from secrecy and the government's grip on power. Where transparency is absent and trust is confined only to a small circle of insiders, suspicion of wrong-doing is hard to shake off. This contrasts with generalised trust in the authorities associated with effective government, open government, low crime rates, and economic growth (Uslaner, 2005, p. 77) where people are prepared to give office holders the benefit of the doubt. Although nobody may act, a suspicious culture can eventually lead to a "rotting fish" effect wherein "you live in a society where everybody steals. Do you choose to steal" The probability of being caught is low "Therefore, you too steal" (Mauro, 1998). People really have to trust their institutions, most of all the quality of their governance, their confidence in what it delivers, its decent and fair treatment of its clients, its reliability and dependability, its legitimacy, its ability to protect them from risk, and its promotion of social trust (Rothstein, 2011). Social mistrust breeds suspicion of corruption that can readily be confirmed in daily experience at the hands of other people. In short, where there is smoke, there is likely to be fire. Stories about perceived corruption are legion almost everywhere although they may be figments of the imagination.

2. Identification as being corrupt

People consider whether a particular act or actor is corrupt or not (Larmour, 2008, p. 231). Identification is a social event rather than a solitary decision.

It involves language, and in practice is likely to involve the to-ing and fro-ing of discussion with colleagues or friends or family (or some kind of internal dialogue reproducing these interactions). This process may refer to what others have done before, or would do — and involve role models, childhood injunctions, and the examples set by characters in folktales or film (ibid., p. 231-2).

Thus, gift-giving in Kiribati to public officials with the sole intention of showing respect is acceptable practice according to local custom and is not seen as corruption. Historically, the ritualised exchange of gifts has symbolised sharing, hospitality, friendship, trust, charity, and alliance (Taylor, 2001, p. 96). Drawing a line between gifts and bribes as in Kazakhstan involves recognising contradictory standards that coexist depending on content, status of recipient, motive and transparency of the exchange, and moral and legal definition of the exchange (Werner, 2000).

Elsewhere, as in Singapore, gift-giving to public officials is prohibited. It is seen as an attempt to curry unfair advantage or favour. The acceptance of gifts is also prohibited as a dereliction of duty and too much of a temptation to misuse authority and sway discretion. Furthermore, too much gift-giving may be too much of a good thing as

in Japan where it can be viewed as being inappropriate where it goes well beyond just buying preferential treatment from public officials to reinforcing networks (*jinmyaku*) generating reciprocal relationships between the giver and the receiver already entrenched through other social relationships (marriage, education, party affiliation) that create a fairly informal homogeneous policy elite (Choi, 2007, p. 933). The gifts come in all kinds of forms that solidify cronyism, aristocracy, kleptocracy, and inequality.

3. Seriousness

No anti-corruption effort can succeed without strong political and public support. The seriousness with which corruption is taken is crucial as seriousness corresponds to moral pressure brought on corrupt public officials and aids on the thoughtfulness and thoroughness of anti-corruption efforts. But where corruption is widely suspected and assumed, where many problematic practices are tolerated as daily routines, and where much of the public is excluded from public policy making and responsible government, it is unlikely that corruption will be taken seriously because there is little oversight and public involvement. This is where power distance, interpersonal trust, relationship with authority, emphasis on personal moral obligations, and conflict resolution really count and involve transformations in both state and society (Abel and Gupta, 2002).

4. Willingness to criticise and report

Cultures which attach great importance to interpersonal relationships label as betrayal behaviour endangering such relationships or harming the material and reputational welfare of superiors, family members, business associates, friends, and workmates. There is an effective vow of silence in which nobody rats on another. Everybody turns a blind eye at corrupt practices and wrong-doing (Schuster, 2004, 9) and nobody reports another's misconduct lest it bring "shame to the family involved, damage to the social fabric, and the breaking of relationships" (James and Tufui, 2004, p. 10). These cultural values make it more difficult to disclose and curb corrupt practices. Rarely does only one person act alone and able to hide the corruption that is being perpetrated. Others must know and yet they keep their knowledge to themselves. The corrupt rely on their silence or complicity that turns corruption into crime (Rosoff, Pontell, and Tillman, 2003).

5. Authoritative judgments

Tampering with judgmental decisions is a time honored practice very much influenced by culture where the status, wealth, marital condition, or sex of a client counts. The weaker sex, the poor and underprivileged are at a distinct disadvantage as are strangers and outsiders. This is particularly true where discretion rules and the law is unclear. All is subject to interpretation which brings in custom and tradition in

deciding what is or is not considered corruption or harmful enough to be taken seriously (Taafaki, 2004, p. 15). The victims of misconduct can expect little if any consideration and no fair hearing. No stain attaches to the accused who are vindicated of all wrong-doing. Thus, corruption is perpetuated and even institutionalised as normal behaviour.

6. Implementation of authoritative decisions

Judgment is tempered by mercy, sometimes in outrageous ways when the guilty are let off with a mere reprimand or a promise to compensate any proven victims in what may be viewed as a victimless crime. It is good to have friends in high places or to be a celebrity or to be so esteemed for previous acts of courage, leadership, and charity that one's misconduct is overlooked or forgiven. When sufficient time has expired and memories have faded, implementation can be relaxed and the guilty handsomely compensated for taking the blame on themselves and not revealing accomplices or worse offenders. So, authoritative decisions if inconsistent with well accepted cultural values and the way things are usually done are harder to adhere to and effectively carry out. Thus, despite government bans, lavish feasting remains prevalent in top senior official circles in some Asian circles.

7. Punishment/Enforcement

Where insiders are corrupt but can hide their wrong-doing, they are aware that any disclosure will imperil all. They may pick on someone who has fallen out of favour as a warning to others to toe the line. More likely, they are lenient in case they too may fall foul and suffer the consequences that may well entail execution, confiscation of all belongings, and expulsion, just to assuage offended public opinion. But the public also may be lenient when there are no obvious victims (Larmour, 2008, p. 234). Institutionalised corruption may be so entrenched that nobody gets punished at all for responsibility cannot be identified with any specific individual and sanctions are absent or rare where cultural norms preclude punitive denial of perquisites as in Indonesia (Smith 1971). The wrong-doing may be morally offensive but lawful or just on this side of the law well thought out by the most respected professionals in the business to escape prosecution as seems to be much of the case for those responsible for the 2008 global financial crisis and other corporate wrongdoing (Caiden and Caiden, 1977, Caiden, Dwivedi, and Jabbra, 2005, Nocera, 2011, Porter, 2012).

Culturally-Based Incentives

Another approach to explain how culture impacts corruption is to look at culturally-based incentives that drive personal choices. According to Robert Merton, "all social systems set cultural goals — objectives - that human actors seek to achieve, as well as approved means to gain them" (Lipset and Lenz, 2000, p. 117). Social systems press those with few resources to seek the dominant goals such as high income

or social status. Many who have little access to opportunity will reject the rules of the game and try to succeed through unconventional (criminal or innovative) means. Thus, cultures which stress economic success but offer limited opportunities are more likely to encourage corruption, a finding confirmed by World Value Surveys and Corruption Perceptions Index data wherein countries like Russia, South Korea and Turkey with high achievement orientation are reputed to be highly corrupt.

But achievement orientation is counter balanced by a country's ethical system, that is, by the clarity of its ethical norms, the role of authority figures in enforcing those norms, the effectiveness of cultural sanctions, and the tolerance for deviation. Corruption often presents a dilemma between two ethical claims.

Acting properly is often a matter of reflection and calculation rather than passion — "weighing up". Some of the calculation involves rehearsing how you will explain or justify what you did — if it comes out. But cultural factors may determine the factors that people take into account, and the weighting they give them (Larmour, 2008, p. 234).

Both a culture's influence on public policy and its impact on personal motivation need to be studied. Some aspects are more relevant than others, e.g. power distance, perception of power and willingness to participate in public affairs, ease of detecting corruption, and willingness to report corruption. The general social culture does influence individual decision making, organisational cultures, and investigating suspicion of corrupt practices. Authoritarian cultures are likely to discourage challenging one's superiors, certainly whistleblowing. Likewise, societies dominated by familism are likely to experience nepotism. Four such features are selected for further treatment, namely, power distance, amoral familism, trust, and the distinction between public and private ethics, all of which represent the interface between culture and governance.

1. Power distance

Authoritarianism and totalitarianism probably demonstrate the greatest power distance between rulers and ruled. Lord Acton clearly understood the conflict between religious hierarchy and personal autonomy. Gert Hofstede has updated Lord Acton. Wherever might prevails over right, it is understood that inequality puts all individuals in their place, an order that "satisfies people's need for dependence and gives a sense of security to those in power and to those lower down" (Hofstede, 1991, p. 38). The evil of high power is reflected in the high degree of corruption.

A desire for status consistency is typical for large power distance cultures. In such cultures the powerful are entitled to privileges, and are expected to use their power to increase their wealth. Their status is enhanced by symbolic behaviour which makes them look as powerful as possible ... Scandals

involving persons in power are expected, and so is the fact that they will be covered up. If something goes wrong, the blame goes to people lower down the hierarchy. If it gets too bad, the way to change the system is by replacing those in power with revolution. Most such revolutions fail even if they succeed, because the newly powerful, after some time, repeat the behaviours of their predecessors, in which they are supported by the prevailing values regarding inequality (ibid., p. 38).

Obviously, power distance results in suspicion of corruption, hesitancy in identifying the corrupt, and leniency in sanctions. It probably also intensifies success orientation by providing incentives for people of lower status to aspire to higher social status in seeking more prestige and privileges. This boils down to a matter of access, who has or does not *entrée* (Schaffer, 1986).

2. Amoral familism

Amoral familism refers to the mentality that considers it natural to maximize the material, short-run advantages of the family, assuming that all others do likewise (Banfield, 1958, p. 85). It is reflected in (a) lack of interest in the community unless it is in one's personal advantage; (b) officials concern themselves with public affairs because they are paid to do so; (c) checking on officials is the business only of other officials; (d) concerted action is difficult to achieve or maintain; (e) office holders do not identify with the purposes of their organisation and only work no harder than necessary to retain their position; (f) where there is little or no fear of punishment the law will be disregarded; (g) office holders take bribes if they can get away with it; (h) the weak favour a regime that maintains order with a strong hand; (i) inspiration by zeal for public rather than private advantage is regarded as a merely a cover; (j) lack of connection between ideology and concrete behaviour in daily relationships; and (k) whatever group is in power is self-serving and corrupt (ibid. 85-104). In short, social obligations are to family, not to good neighbourliness while public service remains an ideal value rarely realized (Campbell, 1989, p. 336). Amoral familism, as in *amigo* networks, expresses particularism and "gives rise to corruption, and fosters deviance from norms of universalism and merit" (Lipset and Lenz, 2000, p. 120), a point interpreted as the mismanagement of self-interest in patronage and other systems based on personal connections (Rose-Ackerman 1999, 106-108). Even in the highest circles, family (personal rather than public or official or professional) still counts for something in all societies. If one should be in a position to give a helping hand, why not do so? This practice is so obvious in Melanesia where it is expected of the Big Man leading the tribal wantok (Fujuyama, 2011, pp. x-xii).

3. Trust

Generalised trust is universalistic and rests on the foundation of openness rather than personal favouritism or self-interest (Uslaner, 2005, p. 77). In contrast, strategic

trust is based on daily experience with specific people and particularised trust puts faith only in people like oneself. So, low generalised trust coupled with high strategic and particularised trust correlates with more corruption. In-group ties sustain corruption as partners are expected to deliver on their promises to keep their vow of silence which is opposite to generalised trust in the larger society. Organised crime penetration of public affairs operates this way but so do many professional public service insiders too. This is at the heart of patron-client relationships where people seek patronage from strategically positioned kinsfolk, friends and protectors, informal networks of acquaintances who can do favors for one another. But such favours entail obligations to repay "on more or less a *quid pro quo* basis and if not repaid when requested or expected" terminates the relationship (Boissevain, 1989, p. 312). Such networking is possibly the most common form of corruption worldwide. It greases the machinery of governance functioning smoothly and unobtrusively. It strengthens the bonds between rulers and ruled and if this is its aim, it acts advantageously and serves a useful purpose. Social networks fostered by civic associations break down the barriers between bureaucracies and their grassroots clients and promote social stability. In so doing, they aid neglected minorities and others who feel left out in the cold without a voice. But there is no substitute for promoting general social trust in public institutions (Kornai and Rose-Ackerman, 2004, Rothstein, 2011).

4. Public versus private ethics

There is a difference between public roles and private interests. Harshly put,

In the corrupt state, men locate their values wholly within the private sphere and they use the public sphere only to promote private interests. Not only do some men pursue political office and power to further their own interests, but also most citizens try to use their votes, their support or non-support, to further their own immediate interests. Leaders can then easily play on them with promises and flattery. When in office, leaders are able further to manipulate the populace since citizen attention soon wanders, and promises are forgotten because private interests are relatively easily satisfied... A process then begins which ends by taking all real political power out of the hands of the people... Decisions inevitably go to the most powerful whose private interests win the competition. Public power merely magnifies economic power and social prestige... For privatised politics entails the deliberate refusal to seek for the universal or general, and it is to reject even the attempt to distinguish between subjective private desire and a collectively determined public good. (Shumer, 1979, pp. 9-11)

In contrast, impartial, objective, expert, professional bureaucracy ideally demands a strict distinction between the private and the public. Employees are expected to act without fear or favour, independently and objectively following the official rules of the

game without their personal feelings intervening.

Although it is desirable that individuals be personally moral and ethical, the [administrative] system is based on a different set of principles from personal morality. One can say that "the success of the constitutional state is founded on its ability to separate the exercise of power from the moral character of the power holder." Besides institutional checks and balances that deter the misuse of power, public morality is grounded in the political culture of a society that consists of common norms and attitudes about appropriate behaviour in the public realm, and these institutional and cultural rules reinforce each other (Karklins, 2005, p. 101).

This separation of public and private morality requires a political culture that comprises "norms and values that are part of what we call civic culture, the bureaucratic ethos, the ethos of public responsibility, and so on" (Kaminski, 2005, p. 83). As the political culture regulates official conduct, "corruption denotes the process of penetration of private criteria into the public domain". It is these public civic norms that set corruption apart from mere personal dishonesty and labels corruption to behaviours otherwise justified by private moral standards. Keeping one's word may be a principle of personal ethics but public ethics requires transparency and full disclosure simply because public leaders, indeed all public employees, are expected to strengthen public respect for public institutions. But this distinction between public and private morality is often blurred in conflicts of interest and too often ignored by those lacking in personal integrity. This failure to separate public from private morality undermines many anti-corruption efforts, including many a brave effort by international aid agencies to reduce its detrimental impacts (Klitgaard, 1990, Spector, 2005).

The Bottom Line

Because so much corruption is embedded in culture, the task of overcoming its harmful effects is indeed daunting. Too often fighting corruption by the playbook (Johnson, 2008, p. 206) fails to appreciate all the complex and complicated cultural elements that sustain corruption. To curb corrupt practices requires a deep appreciation of local community cultures. After all, corruption has plagued societies for thousands of years and is likely to be around for many years to come. There are few easy solutions. The countries that are reputed to be relatively free of corruption, such as Denmark, Finland, New Zealand, and Singapore, have taken decades to build up personal integrity and responsibility and they still fight a constant battle against the corrupt whose inventiveness seems to be boundless. Corruption is rightly or wrongly blamed for many of the ills of society. Universally people resent it even when they do not know its extent, its price, its distortions, and its many victims. Everyone who wants to know can point out incidents of nepotism, patronage, undeserved favours, bribery, falsification, embezzlement, dishonesty, cheating, organised crime, and so many other instances of

corrupt practices in their midst. Corruption is hidden yet it is rare for the evidence to disappear completely just as the corrupt are known if not publicly exposed for what they are, what they do, and how much help they receive.

To put the whole issue into context, there are too many people who gain by corruption or are ambiguous about it because they may lose if it were curbed. For those unable to do anything about corruption and whose voice is drowned out, they have many more important issues more central to their lives to be concerned about from worrying about war to just surviving from day to day in a global society that they do not yet fully comprehend. These victims of corruption, and everyone is a victim whether or not they are aware of it, look to public authorities to take effective action to curb its presence. Far too often it is the lack of personal integrity of those who do know better that blocks progress; they hide behind cultural prejudices that they help to perpetuate. Most galling is the failure of the corrupt and the corrupted to acknowledge their guilt and to have any self-recriminations at all. Indeed, even when they have been found guilty of terrible crimes against humanity or caused so much harm to their many victims, they express no regrets and are proud and boastful of their achievements. They knowingly and intentionally intended to wreck havoc and cause as much damage as they could just like terrorists and murderers. Worse still, is when they are excused and given just a slap on the wrist or a light sentence to resume their misconduct but under better cover this time, knowing how well supported and protected they really are (Guerber, Rajagopalan, and Anand, 2011). This way, corruption is perpetuated and the corrupt get off lightly. Tragically, corruption eventually kills people, its innocent victims, and that is why corruption in all its forms must be taken more seriously than it usually is and needs to be tackled with ceaseless vigilance. As more and more people become aware of its dysfunctions which victimise all, so they may insist that their rulers adopt the many known, workable remedies or at least give them a try. They could begin by looking at themselves and insisting that they improve their own personal integrity, enforcing professional ethics, and restoring public credibility and trust in public institutions, means for which already abound in the anti-corruption literature.

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Curbing Corruption in Asian Countries: An Impossible Dream?

By Jon S.T. Quah, (Bingley: Emerald Group Publishing Limited, 2011), ISBN: 978-0-85724-819-0, 500 pages.

This book written by a long-time observer and a highly respected academic is no doubt becoming a classic work on anti-corruption in Asian states. Delineating an analytical framework that studies the causes, consequences of control patterns of corruption in Asian countries, Jon Quah uses Chapter One of his book to skillfully trace how corruption turned from a research taboo in the World Bank to the agenda of its aid program in mid-1990s. The surge of the global interest in corruption also stemmed from the emergence of civil societies in many parts of the world and to the trend of democratization and marketization (p. 8). Quah adopts Arnold J. Heidenheimer's threefold classification of public-office-centered, market-centered, and public-interest-centered definitions of corruption, while focusing on the public office-oriented definition in his book. Quah comprehensively outlines several major causes of corruption, including the low salaries of civil servants, the existence of the opportunities of corruption and of red tape, the low risk of detection and punishment of corrupt offenders, the lack of political will on the part of political leaders, and such cultural factors as gift-taking and reciprocal favors. Rejecting the argument that corruption can be a "lubricant" stimulating economic growth in developing states, Quah argues that the consequences of corruption are fundamentally detrimental to their economy, governance and human costs. He then advances three patterns of corruption control in Asia: the first one relying on anticorruption laws without Anti-Corruption Agency (ACA) to implement these laws, the second one embracing the combination of anticorruption laws and multiple ACAs, and the third one characterized by the impartial implementation of comprehensive anticorruption laws by a single ACA (p. 27). Japan belongs to pattern one, while pattern two includes India, the Philippines, Taiwan, China, Cambodia and Vietnam. Pattern three includes Singapore, Hong Kong, Malaysia, Thailand, South Korea, Indonesia and Mongolia. Quah finally emphasizes the importance of the policy contexts of the ten Asian countries he studies — Japan, India, the Philippines, Taiwan, Singapore, Hong Kong, Thailand, South Korea, Indonesia and Mongolia. By policy contexts, he refers to the size of the country concerned, the GDP per capita, the nature and size of the population, and the nature of the political system. Each of the following chapters, ranging from chapter two to chapter eleven, examines in details the cases of Japan, India, the Philippines, Taiwan, Singapore, Hong Kong, Thailand, South Korea, Indonesia, and Mongolia respectively. All the chapters are informative, rich in data, evaluative, and invaluable for all those who wish to have a deeper understanding of the anticorruption efforts of the ten Asian states.

Quah's insights on the dynamics of corruption in all the ten case studies are sharp and worthy of our attention. Despite the fact that Japan is characterized by a Western-

style democracy with the rotation of political party in power, its political system is vulnerable to corruption. The reasons are, according to Chapter Two, the cultural propensity of taking gifts, societal tradition of *amakudari* (reemployment of top bureaucrats in private and public corporations and their movement to political life after their retirement) and structural mix between money and politics. Quah concludes that Japan is unique as it combines a high level of grand corruption with a low level of petty corruption. Chapter Three focuses on India, where the dynamics of corruption are mainly the low salaries of civil servants, red tape, the low probability of detection and punishment, the societal tolerance of corruption, and the lack of political will. Quah concludes that India has not demonstrated strong political will in combating corruption. Chapter Four shows that the causes of corruption in the Philippines are similar to that in India. Quah stresses the importance of the political will of the leaders in the Philippines to tackle corruption. Chapter Five views corruption in Taiwan as being caused by the low salaries of civil servants, red tape, the low probability of detection and punishment for corrupt offenders, the Chinese traditions of gift-taking and *guanxi*, and the lack of political will on the part of the political leaders. Quah concludes that although the Taiwan President Ma Yingjeou is determined to combat corruption, the existence of multiple anti-corruption agencies without proper coordination is going to hamper the combat against graft. Chapter Six contends that Singapore's Corrupt Practices Investigation Bureau is an effective case of anti-corruption as it has legal, political and public support, but the challenge for Singapore is to maintain the tradition of an honest and effective government. Chapter Seven examines the successful case of Hong Kong's Independent Commission Against Corruption (ICAC), which to Quah is also accompanied by public support and the strong political will of leaders to combat corruption. However, the challenge for Hong Kong is to maintain its institutional health and integrity. Chapter Eight focuses on Thailand, where the causes of corruption include low salaries of civil servants, red tape, the low risk of detection and punishment of corrupt offenders, the cultural practice of gift-giving and prevalence of patron-client networks, and the proliferation of money politics and vote-buying in elections. Chapter Nine argues that corruption in South Korea is caused by low salaries of civil servants, gift-giving tradition, red tape, and the low probability of punishment for corrupt officials. Although the South Korean government has taken anti-graft measures since the 1950s, including the introduction of the Korea Independent Commission against Corruption in 2002 and the formation of the Anti-Corruption Civil Rights Commission in 2008, Quah views the Korean example as having multiple agencies without the political will of leaders to combat corruption. Chapter Ten analyzes the case of Indonesia, which according to Quah has demonstrated the root problems of lacking a tradition of meritocracy, having low salaries of civil servants, showing red tape and inefficient administration, having weak disciplinary control and ineffective policing, and relying on incremental and institutional reforms. Chapter Eleven evaluates the case of Mongolia, which is also plagued by the low salaries of civil servants, red tape, the cultural propensity of using the back door, the low probability of punishment of corrupt offenders, and the lack of political will to fight against corruption.

Chapter 12 is the heart of the entire book as it sums up Quah's major findings and arguments. He gathers all the useful data on anti-corruption from a comparative perspective, including the data from the World Bank the statistics on public trust of politicians in the ten Asian states, and the Transparency International's data. Quah concludes that Singapore and Hong Kong adopt the third pattern of corruption control by relying on one single anti-corruption agency to enforce their comprehensive anti-graft laws. Although Thailand, South Korea, Indonesia and Mongolia have also adopted pattern three their anti-corruption efforts have been hindered by various problems, such as the limited powers of the anti-corruption agencies, the low salaries of civil servants, and the lack of political will. Pattern 2 is adopted by India, the Philippines and Taiwan as they rely on multiple anti-corruption agencies, which compete for scarce resources, lack coordination and enforce anti-graft law partially. Japan, to Quah, is an anomaly as there is a high level of grand corruption coexisting with a low level of petty corruption. He concludes that "curbing corruption in Japan remains an impossible dream until the 'rotten triangle' of politicians, bureaucrats and businessmen, which nurtures the existing system of structural corruption, is destroyed (p. 453)." Apart from the emphasis on the political will of leaders to combat corruption, Quah has stressed the importance of different policy contexts, including the level of economic development and the nature of the political systems. He argues that both Singapore and Hong Kong "have more favorable policy contexts than most of the other 19 Asian countries because both are politically stable city states with smaller territories to govern, with higher GDP per capita and relatively small populations (p. 458)." Quah finally concludes that, in addition to the critical factor of the political will of leaders to fight against corruption, the other four key ingredients for an effective anti-corruption strategy include (1) the incorruptible and independent nature of the anti-corruption agency, (2) the punishment of corrupt offenders, (3) the reduction in the opportunities for corruption in vulnerable government departments, and (4) the need to pay adequate salaries to both political leaders and civil servants so as to prevent them from being succumbing to the temptation of accepting bribes (p. 460). Quah stresses that the "successful experiences of Singapore and Hong Kong Special Administrative Region in minimizing corruption demonstrate that curbing corruption in Asian countries is not an impossible dream if there is political will (pp. 466-467)." Moreover, "whether corruption remains a fact of life or a way of life in Asian countries depends mainly on whether their political leaders, civil servants and citizens are committed to minimizing it by addressing its causes through the implementation of a policy of zero-tolerance towards corruption.... Without such political will, curbing corruption in these Asian countries will remain an impossible dream (p. 469)."

Quah's book contributes immensely to our study of the dynamics of corruption in Asian states by focusing on the twin issues of institutional design in anti-corruption and the political will of leaders. His consideration of policy contexts also has wider implications for researchers, who may have to take into account other domestic factors shaping corruption control. These factors, as discussed by Quah, include the size of the

countries, the level of economic development and the nature of the political system. The successes of Singapore and Hong Kong can be arguably special due to their relatively small size. In large countries like China, for example, central-local relations remain a crucial factor shaping the variations in which different provinces and local governments combat corruption. While most provincial governments obey the directives of the central government to control corruption, the local governments under the provincial level may distort the central directives. Hence, a hypothesis that has not been considered by Quah is that in large countries, corruption control is influenced by the dynamics of central local relations. This central-local tug-of-war can perhaps be applied to other large countries studied by Quah, such as Indonesia and India. Furthermore, Quah has not probed whether the amnesty of corrupt offenders, like the case of Hong Kong under the British rule, may be a feasible strategy for large countries to curb corruption. Granting an amnesty to corrupt offenders before a particular year, and enforcing severe penalties on corrupt offenders thereafter, may constitute a turning point bringing about a clean break with the past. The case of Hong Kong where Governor Murray MacLehose granted an amnesty to corrupt offenders before 1 January 1977 demonstrated a clean break with the past. If large countries witness corruption as a fact of life, granting an amnesty may be a feasible solution for them to curb corruption effectively.

Despite the omission of both central-local relations in various countries, especially the large ones, and the use of amnesty of corrupt offenders to constitute a clean break from the past, Jon Quah's book is undoubtedly the most significant, comprehensive and insightful classic on corruption control in Asia. It will continue to be a must read in many years to come. Its emphases on a proper institutional design in the form of a single powerful anti-corruption agency, accompanied by the political will of leaders to fight against corruption, prevent a powerful thesis and recipe for any Asian state to control corruption. Scholars, practitioners, government officials and researchers from various disciplines will benefit tremendously from the insights and findings in this classic work on anti-corruption in Asia.

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